

DATE: May 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09571

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 27-year-old employee of a defense contractor, used marijuana twice shortly before she submitted her security clearance application. She denied on her security clearance application that she had used any illicit drugs. She admitted to the use of the marijuana during a security investigation in 2001 in response to her filing of the security clearance application. Applicant failed to demonstrate it was in the national interest to grant her a clearance. Clearance is denied.

STATEMENT OF THE CASE

On October 22, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline H (Drug Involvement), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) 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 Applicant, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated November 15, 2002, Applicant responded to the SOR allegations. She requested her case be decided on the written record in lieu of a hearing.

On January 31, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) [\(u\)](#) was provided to the Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Nothing in the record indicates that Applicant filed a response to the FORM. The case was originally assigned to Judge Michael Leonard on March 21, 2003. The case was reassigned

to me on April 17, 2003, because of caseload considerations.

FINDINGS OF FACT

Applicant admitted the SOR allegations in subparagraphs 1.a and 2.a. and 3.a. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 27-year-old employee of a defense contractor seeking a security classification to allow her to maintain her employment. She submitted a security clearance application on July 14, 1999. She did not admit her use of marijuana on the security clearance application, Question 27, and answered that question by stating "No" in response. While Applicant asserts in her Response to the SOR that she thought the incidents with marijuana occurred after she submitted her security clearance application, and her sworn statement of June 27, 2001, states at least one incident occurred in late 1998 or early 1999, I find that both of the two incidents occurred before the filing of the security clearance application. Applicant states she has not used drugs since then or before that time. The use of marijuana made her ill or had no effect, and her statements vary on that point. I find it had no discernable effect on her because of the variance in her reports of the effects. (Item 3 at 1; Item 4 at 1 and 7; Item 5 at 1 and 2)

Applicant served in the military and received an honorable discharge. She works at a computer company and has for the past three years. (Item 3 at 1)

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline H - Drug Involvement

Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information Directive, ¶ E2.A8.1.1.1.

Drugs are defined as mood and behavior-altering substances and include: E2.A8.1.1.2.

Drugs, materials and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens): E2.A8.1.1.2.1. and

Inhalants and other similar substances. E2.A8.1.1.2.2.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. E2.A8.1.1.3.

Conditions that could raise a security concern and may be disqualifying include: E2.A8.1.2.

Any drug abuse (see above definition). Directive ¶ E2.A8.1.2.1.

Conditions that could mitigate security concerns include: E2.A8.1.3.

The drug involvement was not recent. Directive ¶ E2.A8.1.3.1.

The drug involvement was an isolated or aberrational event. Directive ¶ E2.A8.1.3.2.

A demonstrated intent not to abuse any drugs in the future. Directive ¶ E2.A8.1.3.3.

Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, with out recurrence of abuse, and a favorable prognosis by a credentialed medical professional. Directive ¶ E2.A8.1.3.4.

Guideline E - Personal Conduct:

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility: E2.A5.1.1.

Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personal security or trustworthiness determination. E2.A5.1.1.2.

Conditions that could raise a security concern and may be disqualifying also include: E2.A5.1.2.

The deliberate omission, concealment, falsification or misrepresentation of relevant and material 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; E2.A5.1.2.2.

Conditions that could mitigate security concerns include: E2.A5.1.3.

The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; E2.A5.1.3.3.

Guideline J: Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. E2.A10.1.1.

Conditions that could raise a security concern and may be disqualifying include: E2.A10.1.2.

Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.1.

A single serious crime or multiple lesser offenses. E2.A10.1.2.2

Conditions that could mitigate security concerns include: E2.A10.1.3.

The criminal behavior was not recent. ¶ E2.A10.1.3.1

The crime was an isolated incident. ¶ E2.A10.1.3.2.

There is clear evidence of successful rehabilitation. ¶ E2.A10.1.3.6.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, I can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. Likewise, I have attempted to avoid drawing any inferences that are based on mere speculation or conjecture.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline H, the Government established its case. The SOR alleges Applicant used marijuana twice in late 1998 and early 1999. Under Guideline H, an applicant's illegal involvement with drugs raises questions regarding her willingness to protect classified information. Disqualifying Condition (DC) 1 applies here. A security concern may exist if an applicant uses or purchases illegal drugs such as marijuana. DC 2 applies here also.

The Mitigating Conditions (MC) 1 (not recent), 2 (isolated or aberrational incident), and 3 (expressed intent not to use it in the future) are present here and applicable. She smoked the marijuana in a short time period, and there is no evidence of any prior or post 1998 and early 1999 use. She did state her intention not to use it again. I find for Applicant by applying these mitigating factors, which outweigh the DC.

With respect to Guideline E, I conclude the Government proved its case as it sets forth in subparagraph 2.a. that Applicant deliberately failed to disclose her drug involvement on the personnel security questionnaire submitted in July 1999. Under Guideline E conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. A security concern may exist when an applicant deliberately omits, conceals, or falsifies relevant and material facts from her personnel security questionnaire or deliberately provides false or misleading information concerning relevant and material matters to an investigator in connection with a personnel security determination. Through Applicant's admissions, the Government established a prima facie case that Applicant deliberately falsified her security clearance application in 1999.

By admitting in 2001, two years after she filed the security clearance application, that she used drugs and lied about it, Applicant "took positive steps to reduce her vulnerability." However, this mitigating action is not sufficient to outweigh the disqualifying conditions. She lied about her use of drugs in the time period requested in Question 27. Applicant deliberately did not include the information requested on her security clearance application concerning her use of marijuana. Because the two incidents of use are immediately before the submission of the security clearance application, I do not believe she could not remember them. Her statement in June 2001 admits she did not list them because she was afraid she would not get a security clearance. Therefore, I find Applicant deliberately falsified the answer to Question 27 on the security clearance application. Regarding the MC 3 (a good faith effort to correct), I conclude C 3 is not met or is applicable. I find against Applicant.

Regarding Guideline J (Criminal Conduct), the Government alleged Applicant committed criminal conduct by deliberately falsifying her security clearance application in violation of 18 U.S.C. 1001. Here too the Government proved its case. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. A security concern arises and may be disqualifying in this case when there are allegations or admissions of criminal conduct, regardless of whether the person is formally charged, which is Disqualifying Condition (DC) 1, or a single serious crime or multiple lesser offenses occurs, which is DC 2.

The Mitigating Conditions (MC) that might apply are that the falsification incident was not recent (MC1), was isolated (MC2), or there is evidence of successful rehabilitation (MC3). I do not find that these mitigating conditions are present because the offense is recent and not isolated based on her July 2001 statement, and there is no evidence of any true

rehabilitation. By deliberately falsifying her security clearance application, Applicant violated 18 U.S.C. 1001. She never accepted her responsibility for deliberately falsifying the application, and admitted she did it to obtain a security clearance for her employment. She even claimed that the polygraph examiner confused her. In her response to the SOR she claims she used marijuana once, but in her July 2001 statement she admits two incidents of use. If she has any credibility on this issue, I think it is in the July 2001 statement made during the investigation. Therefore, I find against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline H: For Applicant

Subparagraph 1.a.: For Applicant

Paragraph 2 Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

Paragraph 3 Guideline J: Against Applicant

Subparagraph 3.a.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge

1. The Government submitted five items in support of the SOR.