

DATE: November 22, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-05249

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's alcohol-related arrests in 1993 and 1997 and her personal conduct in omitting relevant and material information on her security forms raise security concerns. Applicant continues to drink and failed to provide any documents which show positive changes in her behavior supportive of sobriety. Doubt remains as to whether she is fully rehabilitated given her arrests and questionable conduct in omitting these alcohol-related arrests, treatment, and an adverse employment issue from her security form. Her reasons for omitting the information were inconsistent and therefore not credible. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on February 20, 2002. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over Alcohol Consumption (Guideline G) and personal conduct (Guideline E). (Item 1) Applicant responded to these SOR allegations in an Answer notarized but undated where she admitted all the allegations except for 1.c. She did not request a hearing, so the case was assigned to Department Counsel to prepare for a decision on the administrative record. On May 21, 2002, he prepared the File of Relevant Material (FORM) for the Applicant's review and advised Applicant that she had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that she had the right to be represented by counsel.

A Personnel Security Specialist (PSS) sent the FORM to Applicant on May 21, 2002, and again notified the Applicant that she had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on May 29, 2002. Although the response was due on June 28, 2002, Applicant submitted no response. On July 16, 2002, the case was assigned to me.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 58 years old, has been an employee of Defense Contractor #1 in State #1 since 1995. In July 1999 she applied for a security clearance by completing a Security Clearance Application (Standard Form 86) (SF 86). She is widowed. (Item 5)

Alcohol Consumption and Personal Conduct

Applicant continues to drink alcohol and sees herself as a social drinker. In response to Interrogatories Concerning Alcohol, she admitted in November 2001 that she still continues to drink, but not to the point of intoxication; she admits drinking alcohol makes her drowsy and talkative. (Items 4 & 6) She admits to two alcohol-related incidents alleged in the SOR. After her January 1997 arrest in State #2 ⁽²⁾ for driving while under the influence of alcohol and speeding, State #2 revoked her license for ten days and order her to attend alcohol education classes which she attended for six months in State #1. In June 1993 she was arrested for driving while under the influence of alcohol and her license was suspended; and she was ordered to attend alcohol counseling classes in State #1. (Items 3, 4, 6) Although the SOR alleges at 1.c. that in July 1992 she was cited for "refusal to take 1st Chemical Test "and her driver's license was suspended for 90 days, Applicant denies his allegation; and the Government offered no evidence to support this allegation.

Further, the record reflects that in March 1989 Applicant was 90 minutes late to work because she had been out drinking the night before, overslept, and also had several confrontations after she got to work; she left early and did not properly turn off her equipment. Applicant was discharged the following work day. A State #1 hearing examiner concluded that behavior constituted misconduct under a State #1 unemployment and insurance statute, but was not gross misconduct. (Item 7)

On her SF 86 Applicant denied any police record for alcohol related offenses (Question 24), denied any alcohol-related treatment (Question 30), and denied having an adverse employment record (question 20). Applicant signed and certified that her answers on the SF 86 were true and that she understood that a knowing and willful false statement could be punished by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code. (Item 5) Her reasons for omitting the information are inconsistent and therefore are not a sufficient basis to mitigate.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline G --Alcohol Consumption

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Conditions that could raise a security concern and may be disqualifying include:

(1) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;

Conditions that could mitigate security concerns include:

None

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

(2.) The 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Conditions that could mitigate security concerns include:

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Alcohol Consumption

The Government has security concerns over Applicant's alcohol-related arrests⁽³⁾: she admits two incidents in 1993 and 1997. Conditions that could raise a security concern and may be disqualifying include: (1) Alcohol-related incidents away from work, such as driving while under the influence. Her alcohol incidents show a pattern even though the two incidents were separated by several years. Although not alleged under Guideline G, alcohol was also a factor that led to her discharge from a job in March 1989 after Applicant had been out drinking the night before, left work early, and did not properly turn off her equipment. Despite this pattern of alcohol-related problems, she has yet to make a decision not to drink again; thus, doubt remains as to whether she is fully rehabilitated. She failed to provide any mitigating evidence in response to the FORM.

While there is no indication she was ever diagnosed with an alcohol abuse problem, she failed to detail any positive changes in her behavior which would support a basis to mitigate these concerns. Further, she has made no assertion that she has continued counseling, regularly attends AA, or wants to achieve sobriety. Thus, she fails to meet conditions that mitigate⁽⁴⁾ security concerns by showing positive changes in behavior supportive of sobriety. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 1.a. and 1.b. under SOR Paragraph 1, but for her under 1.c.

Personal Conduct

Applicant failed to reveal her DUI arrests, counseling, and an adverse employment termination on her security form. These failures to disclose led the Government to raise security concerns over personal conduct issues. Applicant's omission of relevant and material information about her alcohol-related arrests, counseling, and also her alcohol-related job dismissal on the security form is conduct that reflects questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that she may not properly safeguard classified information. To rebut and overcome the Government's case, Applicant would have to demonstrate that she has mitigated⁽⁵⁾ this concern.

At her DSS interview Applicant claimed that she misread the question on the security clearance questionnaire. Later she stated she did not know that a DUI charge was an arrest. These reasons are inconsistent. She had a duty to fully answer the SF 86 questions on alcohol-related offenses and employment-related issues. If she was unsure, she had a obligation to ask for clarification. Although she certified that the answers were complete and true, they were not. Further, there is no evidence in the DSS statement that Applicant made prompt, good-faith efforts to correct the falsifications before being confronted with the facts. Hence, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a., 2.b. and 2.c. under SOR Paragraph 2.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

DECISION

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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. Applicant did not list this arrest on her SF 86 in July 1999 nor list it in response to questions about arrests included in Interrogatories Concerning Alcohol in her November 2001 response. In her Answer Applicant claimed that she did not know that a DWI was the same as an arrest. (Item 3) In her Statement to DSS she stated she misread the SF question asking about alcohol-related arrests. (Item 4)

3. With respect to SOR 1.c., the Government offered no evidence to counter her denial of that charge.

4. Conditions that could mitigate security concerns include:

1. The alcohol related incidents do not indicate a pattern; 2. The problem occurred a number of years ago and there is no indication of a recent problem; 3. Positive changes in behavior supportive of sobriety; 4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with after-care requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has

abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

5. Conditions that could mitigate security concerns include:

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;
4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;
5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;
6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;
7. Association with persons involved in criminal activities has ceased.