

DATE: March 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-07751

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Marc Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrested for possession of marijuana in November 1997 after having had a security clearance for more than 16 years. She denied any involvement with marijuana in a security questionnaire she completed November 1998. In a March 1999 DSS interview and in two, signed, sworn statements (one written in Appellant's hand) she admitted regular marijuana use from 1979 to 1981 and admitted taking a "couple puffs" in the two years preceding the interview. In a June 1999 interview and in a signed, sworn statement, she admitted using marijuana monthly from 1979 up to and including the night before the interview. Applicant had previously denied using marijuana in security questionnaires she completed in 1988, 1992, and 1995. At her administrative hearing, Applicant admitted using marijuana only 2 or 3 times in her life, all of the use occurring since 1997. Applicant's credibility about past drug use and future intentions has been undermined by her inconsistent and contradictory statements on security questionnaires and in signed sworn statements. Clearance is denied.

STATEMENT OF THE CASE

On August 2, 2001, the Defense Office of Hearing and Appeals (DOHA), pursuant to 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 which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended referral to an Administrative Judge to determine whether she should be granted a security clearance.

Applicant answered the SOR in writing on August 7, 2001. ⁽¹⁾ The case was assigned to this Administrative Judge on December 14, 2001. On January 23, 2002, a hearing was convened for the purpose of considering whether it is clearly consistent with the national interest to continue Applicant's security clearance. The Government's case consisted of 12 exhibits (Gov. Exh) and one witness. Applicant testified on her own behalf and submitted 12 exhibits (Appl. Exh.). A transcript (Tr.) of the proceeding was received on February 1, 2002.

FINDINGS OF FACT

The Statement of Reasons (SOR) alleged Applicant had used marijuana monthly from "approximately 1978 to at least June 7, 1999," that she may have used cocaine on a single occasion when she was intoxicated, that she continued to use marijuana after having been granted a top secret security clearance, and that she was arrested for possession of marijuana in November 1997. The SOR further alleged Applicant had used alcohol excessively, that she had been arrested in October 1998 for driving under the influence, and that she continued to consume alcohol after being treated for a condition "diagnosed , in part, as substance abuse (alcohol)." The SOR also alleged Applicant had falsified material facts on security questionnaires completed by her in July 1988, April 1992, July 1994, and November 1998, and she had falsified material facts in a signed sworn statement to a Special Agent of the Defense Security Service in March 1999. Finally, the SOR alleged Applicant had participated in a pattern of criminal conduct as evidenced by her falsification of material facts during background investigations and by her arrests: for possession of marijuana (November 1997), for driving under the influence (October 1998), and for disorderly conduct and obstructing legal process in (September 1998).

In her answer to the SOR, Applicant admitted she had been arrested for possession of marijuana, for driving while intoxicated, and for disorderly conduct. She admitted consuming alcohol to the point of intoxication until June 1999, receiving outpatient treatment after this arrest, and she admitted continuing to consume alcohol after receiving treatment. She denied using marijuana from 1979 to 1999, and she denied falsifying material facts on security questionnaires and during DSS interviews. After a complete and thorough review of Applicant's admissions and denials and the evidence of record, and upon due consideration of the same, I make the following additional findings of facts:

Applicant is 39-years old and has been an employee of the same Department of Defense (DoD) Contractor since September 1992. Previously, she had served in the U.S. military (1981-1985) and been employed by two other DoD contractors. She testified she has held a top secret clearance continuously since 1981. Applicant is married to, but in the process of divorcing, her third husband. He has been incarcerated in a state prison in State B since 1997.

In November 1997, Applicant was arrested for possession of marijuana in State A (Gov. Exh. 8). Although a warrant for her arrest (for failure to appear) was issued in March 1998, Applicant has stated "there were never any charges filed against (her) and there has been no further action regarding the incident." Whether it was the arrest for possessing marijuana or the normal passage of time that triggered the re-investigation of Applicant's background is not clear from the record. In any event, Applicant was required to answer questions about her drug involvement in an SF 86 (*Security Clearance Application*) she completed in November 1998 (Gov. Exh. 12). In response to question 24 which asked if she had ever been "charged with or convicted of any offense(s) to alcohol or drugs," Applicant answered "yes" and reported "Possession of non-prescription drug...1997." She was similarly evasive or deceptive in responding to other questions seeking to elicit information about her drug involvement. She answered "no" to question 27 which asked if she had used marijuana or other illegal, controlled substances since the age of 16 or in the last 7 years. She also answered "no" to question 28 which asked if she had ever "illegally used a controlled substance...while possessing a security clearance." Finally, Applicant answered "no" to question 19 which asked if she had consulted a mental health professional in the past 7 years--thereby concealing her treatment for depression, stress, and anxiety in 1995 and again in 1998.

In completing the November 1998 SF 86, Applicant admitted her arrests for other recent incidents of criminal misconduct. She admitted she had been arrested in State B for disorderly conduct after she was detained for smoking in an airline lavatory (September 1998). And Applicant admitted she had been arrested in State C for driving under the influence (October 1998).

The Applicant's "no" answers to the SF 86 questions about illegal drug involvement--when records disclosed she had been arrested for possession of marijuana⁽²⁾ in December 1997--caused the Defense Security Service (DSS) to inquire further. In a March 10, 1999, signed, sworn, hand written statement (in her own hand), Applicant admitted "smoking pot" regularly between the ages of 15 and 18 (Gov. Exh. 1). She further admitted using "pot" again about two years ago when she took a couple of puffs from a marijuana cigarette. She indicated marijuana was found in the car that she had been riding in with her husband when the car was searched incident to his arrest for speeding; she did not acknowledge the marijuana found during this search (November 1997) was actually found in her purse (see Gov. Exh. 8). Applicant

signed a somewhat more detailed, typed sworn statement containing much of the same information as Government Exhibit 1 on March 11, 1999. Again, she admitted smoking marijuana "on a fairly regular basis" between the ages of 15 and 18 (Gov. Exh. 2). She also repeated the account of the marijuana cigarettes being found in the car when she was arrested in November 1997.

Applicant's admissions about prior marijuana use (in Gov. Exhs 1 and 2) also contradicted information she had provided on security questionnaires completed during earlier background investigations. In security questionnaires she completed in July 1988, April 1992, and July 1994 (Gov. Exhs 9,10,11). Applicant had answered "no" to all question that sought to elicit information about illegal drug use.

Applicant was scheduled to be questioned by a second DSS agent⁽³⁾ on June 8, 1999. It is evident from Applicant's testimony, and from the testimony of the DSS agent, that the second DSS special agent was a polygraph examiner (Tr. 32, 35,36, 37). Because Applicant admitted additional marijuana use (up to and including smoking marijuana the previous evening) during a pre-test interview, she was not asked to submit to the polygraph examination (Tr. 43). Applicant admitted during the interview, and in a signed, sworn statement, she had smoked marijuana monthly beginning in 1979 (Tr. 33) and had smoked it as recently as the previous evening (Gov. Exh. 3).

In her answer to the SOR, and in testimony at her administrative hearing, Applicant provided yet another account of her marijuana use. She used it only a few times between 1997 and 1999 (Tr. 21,59,74,86)⁽⁴⁾. She never used it between the ages of 15 and 18--as she had stated in two signed, sworn statements. She provided the account found in Government Exhibits 1 and 2 because the first DSS agent had told her what to write (Tr. 85-86), after she told him her brothers smoked marijuana regularly and she was around marijuana smoke a lot when she was a teenager before she joined the military (Tr. 18-19). She was nervous when she wrote the statement and trusted the DSS agent would not mislead her (Tr. 18-19, 79,94). When questioned (at the administrative hearing) about the marijuana found on her person when she was arrested in November 1997, Applicant testified she had told the arresting officer the marijuana belonged to her only to protect her husband who was on probation (Tr. 88).

As for her signed, sworn statement to the second DSS special agent, in which she stated she had used marijuana monthly from 1979 to 1999, Applicant attributed this admission to a "typo" (Tr. 67). She did not like marijuana and she had used it on very few occasions from 1997 to 1999 (Tr. 21, 59,74,86). She claimed she did not read the very brief (three paragraphs) typewritten statement to the second DSS special agent (Tr. 89) because she was nervous and very relieved she did not have to take the polygraph examination (Tr.71,90). At one point in her testimony Applicant denied the signature on Government Exhibit 3 was hers:

I've never seen it. I have never seen this man

(Tr. 38)

At other times in her testimony, Applicant expressed resentment that she had not been allowed to establish her claimed innocence by taking a polygraph examination (Tr. 38, 50).

Appellant's testimony denying she was aware of the contents of Government Exhibit 3 and claiming she had used marijuana only 3 or 4 times from 1997 to 1999 is not credible. Nor was she credible when she testified she had admitted ownership of the marijuana found in her possession when arrested in November 1997, only to protect her husband. Her efforts to explain her discrepant admissions and the inconsistencies between her signed, sworn statements and her testimony at the administrative hearing are not persuasive (Tr. 84-92). Because of her inconsistent and contradictory statements about past illegal drug use, her testimony about current drugs use is not credible.

In addition to abusing marijuana, Applicant also abused alcohol for a period of time prior to June 1999. She drank several beers several nights a weeks, and she drank three six packs of beer every weekend (Gov. Exh 2). She was arrested for driving under the influence (DUI) in October 1998. The previous month she had been arrested for disorderly conduct incident to being questioned about allegations she had smoked cigarettes in a airline lavatory during flight. The police report of that incident discloses she had had three alcohol drinks during the flight (Gov. Exh. 7, Tr. 92). Applicant attributes her excessive alcohol consumption during this time period to stress related to her husband's incarceration and

to a civil action that had been filed against her (Tr. 48-49). After her October 1998 DUI arrest, Applicant entered outpatient treatment for substance abuse. (S) She did not complete the treatment.

Applicant testified she has reduced her alcohol consumption to an occasional glass of wine or a wine cooler (Tr. 95-96). She does not "touch liquor" and no longer likes the taste of beer. She stopped associating with her friends; she quit communicating with, and is planning to divorce, her incarcerated husband (Tr. 97).

Applicant's work record and professional reputation are above reproach. Several individuals for whom she has worked, or who have worked with her, have written letters on her behalf. She is professional and reputed to be knowledgeable of exceptionally complex military technology. None of these individuals express any doubt about her ability to safeguard classified information. Personal references have described her as a devoted mother/single parent of two children and as someone who sets high standards for herself and her family.

To establish that she has not used marijuana recently, Applicant submitted the negative results obtained from a self-administered urinalysis (App. Exh L).

POLICIES

The Adjudicative Guideline of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable consistency which are clearly consistent with the interest of national security. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of factors set forth in Section E2.2. of the Directive. In that vein, the Government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

DRUG INVOLVEMENT

(Guideline H)

The Concern: 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 or classified information.

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

E2.A.8.1.2.1 Any drug use;

E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

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

E.2. A8.1.3.3. A demonstrated intent not to abuse any drugs in the future.

ALCOHOL CONSUMPTION

(Guideline G)

The Concern: 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:

E2.A7.1.2.1. 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:

E2.A7.1.3.3. Positive changes in behavior supportive of sobriety.

PERSONAL CONDUCT

(Guideline E)

The Concern: 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.

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

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material matters 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.A5.1.2.5. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel or security or trustworthiness determination;

Conditions that could mitigate security concerns include:

None Applicable

CRIMINAL CONDUCT

(Guideline J)

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

E10.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

Conditions that could mitigate security concerns include:

None Applicable

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government established its case, the burden of persuasion shifts to Applicant to establish her security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness. Applicant has a heavy burden of persuasion to demonstrate she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates security clearance determinations should err, if they must, on the side of denials."

As this Administrative Judge understands the Court's rationale, doubts are to be resolved against an Applicant.

CONCLUSION

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guidelines H, G, E, and J. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2., as well as those referred to in the section dealing with the Adjudication Process, both in the Directive.

A security concern is raised by Applicant's abuse of marijuana from 1979 to 1999. 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 occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Although Applicant has provided inconsistent and contradictory accounts about the length of time and the frequency with which she used marijuana, the truth appears to be that she used it much more extensively than she was willing to admit at her administrative hearing. It stretches credulity to believe, as Applicant now asks, that she used marijuana only three or four times in her life; yet she used it the evening before she was scheduled to take a polygraph examination when she knew she was to be questioned about drug use. Even if one were to give Appellant the benefit of the doubt and accept her testimony that she used marijuana minimally from 1997 to 1999, she is still culpable of using marijuana after being granted a security clearance and then lying about it.

Applicant has explained that she admitted marijuana use that never occurred because she was nervous and the DSS special agent suggested she put words on paper that were not true. Her explanations are not credible. Based on the accolades lavished on her by her character references, Applicant is too intelligent to blissfully sign a statement filled with inaccuracies detrimental to her own self interest. Attributing this serious lapse in attention to being nervous is hardly credible coming from a person who had been arrested three times in the two years which preceded her DSS interviews. Being questioned by government or law enforcement officials was not a new or novel experience for her.

While Applicant insists she has never liked marijuana and does not intend to use it in the future, her repeated failure to provide honest, complete, and consistent information about past marijuana use undermines the credibility of her most recent protestations and promises. Under the circumstances, she is disqualified under 10 U.S.C. 986 from having her security clearance renewed. Guideline H is decided against Applicant.

A security concern is raised by Applicant's "deliberate omission....of relevant and material facts" from security questionnaires she completed in 1988, 1992, and 1995, and 1998, and by her "deliberately providing false or misleading information....to an investigator." Facts are considered relevant and material when they are capable of influencing a federal agency's decision, e.g., a decision to grant or deny a security clearance. In this instance Applicant's "no" answers to questions on the security questionnaires intended to elicit information about her drug use and recent mental health history and treatment fall well within the definition of materiality. Applicant did not answer the security questionnaires truthfully, she did not tell the truth in two signed sworn statements to the DSS, and she did not tell the truth during her administrative hearing because she knew her security clearance would not be continued if she disclosed the full extent of her marijuana use. Applicant also was not truthful when she failed to disclose the occasions when she had sought and obtained treatment from mental health professionals in the seven years preceding her completion of the 1998 security questionnaire. Guideline E is concluded for Applicant.

A security concern is also raised by Applicant's abuse of alcohol. 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.

Appellant admits consuming several beers several nights a week, admits consuming three six packs of beer each weekend, and admits occasionally consuming alcohol to the point of intoxication. Her excessive alcohol consumption resulted in her arrest for driving under the influence in October 1998, and was a factor in her being arrested for disorderly conduct in September 1998. She received treatment for a condition related to her excessive alcohol consumption from November 1998 to February 1999. Applicant attributes her excessive alcohol consumption to the

stress and anxiety brought on by her husband's incarceration in 1997.

Applicant's past abuse of alcohol is mitigated by her credible testimony detailing her drastically curtailed consumption since June 1999. She had stopped associating with the friends who were part of her life when she was drinking, and she has stop communicating and is in the process of divorcing the husband who has been incarcerated. She does not touch liquor and no longer likes the taste of beer. Her current alcohol consumption is limited to an occasional glass of wine or a wine cooler. Guideline H is concluded for Applicant.

The Government has established its case under Guideline J. Applicant's willfully withholding information from DoD on matters clearly relevant and material to her security clearance eligibility violated 18 U.S.C. 1001. The information withheld by Applicant when she completed security questionnaire in 1988, 1992, 1995, and 1998 and when she was questioned by a DSS special agent in March 1999 had the potential to influence the course of her background investigation in areas of legitimate concern to the DoD. Guideline J is concluded against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 (Guideline H) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Paragraph 2 (Guideline G) FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. For the Applicant

Subparagraph 2.d. For the Applicant

Subparagraph 2.e. For the Applicant

Subparagraph 2.f. For the Applicant

Paragraph 3 (Guideline E) AGAINST THE APPLICANT

Subparagraph 3.a. Against the Applicant

Subparagraph 3.b. Against the Applicant

Subparagraph 3.c. Against the Applicant

Subparagraph 3.d. Against the Applicant

Subparagraph 3.e. Against the Applicant

Subparagraph 3.f. Against the Applicant

Subparagraph 3.g. Against the Applicant

Paragraph 4 (Guideline J) AGAINST THE APPLICANT

Subparagraph 4.a. Against the Applicant

Subparagraph 4.b. Against the Applicant

Subparagraph 4.c. Against the Applicant

DECISION

In light of all the circumstances presented by this case, it is not clearly consistent with the national interest to continue Applicant's security clearance.

John R. Erck

Administrative Judge

1. Applicant did not request a hearing before a DOHA Administrative Judge in her answer to the SOR. Her preference for a hearing was obviously expressed later and inadvertently omitted from the official file.
2. The "Narrative Report" (see Gov. Exh. 8) prepared by the arresting police officer states: "I continued my search and found a metal tin, in the same pocket (of a black leather bag identified by Applicant as being hers). In the tin I found what looked, and smelled to be marijuana. (Applicant) immediately said it was hers, and asked me not to tell (her boyfriend) she had it."
3. It is evident from Applicant's testimony the second Special Agent was a DSS polygraph examiner (Tr.).
4. Applicant testified she used marijuana only three or four times, and one of those times was the night before she was to submit to a polygraph examination (Tr. 86).
5. Although subparagraph 2.d. (of the SOR) alleges Applicant received treatment for a condition diagnosed as "Substance Abuse (Alcohol)", and Applicant admitted the allegation, this admission to a compound allegation does not establish a diagnosis by a credentialed medical professional--a diagnosis that is otherwise absent from the file.