

DATE: April 29, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-09838

DECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Jonathan Beyer, Esq., Department Counsel

FOR APPLICANT

Philip Esteban

SYNOPSIS

Applicant is a reformed drug user with sixteen years of sobriety and an excellent work record. In 2000, she quarreled with her then-fiancé about his refusal to stop using drugs, and in an ensuing struggle Applicant cut him with a knife, inflicting a superficial wound. Applicant was arrested, but charges were dropped. Applicant and her fiancé reconciled and later married, and the couple has demonstrated a stable, productive and drug-free lifestyle for three years. Clearance is granted.

STATEMENT OF THE CASE

On August 22, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR details reasons 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. It recommended referral to an Administrative Judge to determine whether a clearance should be granted or denied.

The Applicant responded to the SOR in a written answer dated September 25, 2002, in which she requested a hearing. The case was assigned to me on November 27, 2002. On December 4, 2002, a Notice of Hearing was issued scheduling the hearing on December 30, 2002. At the hearing the Government submitted seven documentary exhibits. Applicant presented six exhibits and testimony from four witnesses. The transcript was received by DOHA on January 8, 2003.

FINDINGS OF FACT

Applicant is thirty-seven years old and married, and she is employed by a defense contractor as a document control specialist. At the security clearance hearing, Applicant's testimony and the testimony of her witnesses was credible and worthy of belief. Documentary exhibits presented by the Government and Applicant are valid and reliable.

A former drug user, Applicant is now reformed and rehabilitated. In her youth, she used alcohol, marijuana and later crack cocaine. In 1986, at age 21, Applicant realized the destructive nature of illegal drugs when she "hit bottom" and she stopped using them. (Tr. 55.) Applicant has not used drugs for sixteen years, although she has sometimes abused alcohol. She was convicted of DUI in 1995 and lost her driver's license for one year. At present, Applicant occasionally consumes alcohol, but this is limited to special occasions and she abstains for several weeks at a time. (Tr. 88-89.)

Applicant met her present husband in about 1997, and they lived together as an engaged couple for several years before they were married in February 2001. Early in the engagement relationship Applicant discovered her fiancé was occasionally using drugs away from home. At this time, Applicant and her fiancé drank to intoxication about once per week, but Applicant had been drug-free for over ten years. She repeatedly urged her fiancé to give up his drug usage, but her efforts were not successful. By 2000, Applicant's fiancé was leaving home on weekends and spending his entire paycheck on drugs. (Tr. 53-54.) This happened about once month.

On a Saturday in May 2000, Applicant and her fiancé drank to excess, and her husband announced he was leaving to obtain drugs. Applicant pleaded with him to stay, but he would not. Applicant knew from experience her fiancé would use drugs all weekend and then return sick, having spent all of his funds. Applicant testified she and her fiancé had argued about this many times before, and the arguments sometimes escalated to shoving matches. (Tr. 74-75.)

On this occasion Applicant was "at the point where I had had enough." (Tr. 73-75.) Applicant obtained a knife from the kitchen to scare her fiancé and to prevent him from going out for drugs. A scuffle ensued when her fiancé tried to leave, and Applicant stabbed him or cut him in the shoulder. Her fiancé called 911, and medical personnel arrived to treat his wound, a superficial injury requiring no stitches or hospitalization. Applicant was arrested and charged with malicious wounding, but her fiancé refused to testify against her. The charges were dismissed. (Gov. Ex. 5.)

After this incident, Applicant's fiancé stopped using drugs, and the couple continued to live together. Applicant's fiancé is satisfactorily employed as a furniture mover, and he has been drug-free for nearly three years. He has letters of appreciation for his good work in assisting the presidential transition team in 2001. (App. Answer, attachment.) As noted earlier, Applicant and her husband were married in February 2001. They are both employed, they own a home, and presently they have a stable lifestyle.

In 1997, Applicant worked as a cashier for a drugstore chain, and on two occasions her cash drawer was short by about two dollars. (Tr. 60-62.) Because this occurred more than once, Applicant was discharged from employment. Applicant explains she never took money from the cash drawer, and the shortages were simply a matter of mistake resulting from different persons having access to her cash drawer before it was issued to her and during her breaks. Applicant's explanation is credible and acceptable.

Regarding her present employment, Applicant's character witnesses testified credibly that Applicant is an exceptionally good worker who can be counted upon to safeguard classified information. Her supervisor testified Applicant is a reliable employee, and her off-duty misconduct in the distant past is "of no concern on my part." (Tr. 22.) Applicant's team leader testified Applicant carefully follows all rules and regulations in handling classified documents. He also socializes with Applicant and her husband, and he has never seen Applicant abuse alcohol. He describes Applicant's character as "beyond reproach." (Tr. 35-39.)

Documentary exhibits submitted by Applicant provide further evidence of good character and a stable lifestyle. Applicant's work evaluations from 1998 to the present uniformly describe Applicant as an excellent employee with "superior skills and sound judgment." (App. Ex. C.) She has been awarded twenty performance citations for her good work. (App. Ex. D.) Additionally, Applicant presented copies of recent drug screens which report negative drug use for her and her husband. (App. Exs. A and B.) Applicant's driving record reports no infractions. (App. Ex. F.)

POLICIES

Enclosure 2 of the Directive, as amended by DepSecDef Memorandum dated June 7, 2001, sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny a security clearance (Disqualifying Conditions, hereafter DC) and those that may be considered in deciding whether to grant a clearance (Mitigating Conditions, hereafter MC).

Based upon a consideration of the entire record, I find the following adjudicative guidelines have application in this case:

Guideline E - Personal Conduct. *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.

Disqualifying Conditions applicable:

4. Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;
6. Association with persons involved in criminal activity.

Mitigating Conditions applicable:

5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress.
7. Association with persons involved in criminal activities has ceased.

The whole person concept. In addition to the above guidelines, the Directive provides in Para. E.2.2.1. that under the "whole person concept" the Administrative Judge shall also consider (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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.

CONCLUSIONS

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted upon to safeguard it 24 hours a day. The Government is therefore appropriately concerned where reliable information indicates an Applicant for clearance may be involved in criminal activities or other misconduct demonstrating irresponsibility or a lack of trustworthiness. On a commonsense basis, these unfavorable personal characteristics might easily lead to a disregard of rules and procedures designed to protect classified defense secrets.

With regard to burden of proof in DOHA cases, the Government must prove all controverted facts that tend to demonstrate Applicant is ineligible for clearance. Once this burden is met, the Applicant must overcome the Government's case, if he or she is to prevail, by persuasive evidence in refutation, mitigation, or changed circumstances. However, the Applicant always bears the ultimate and overall burden of proving it is clearly consistent with the national interest to grant him or her a security clearance. Furthermore, the Directive provides "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, Para. E2.2.2.) Thus, the Applicant's burden is a heavy one.

In this case, the Government's evidence proves Applicant is a reformed drug user who has remained abstinent from illegal substances for sixteen years. Applicant has a clear understanding of the destructive nature of drugs, and she does not intend to use them again. After she stopped using drugs, Applicant turned to alcohol as a substitute, and she sometimes drank to intoxication. This resulted in a DUI and loss of driving privileges in 1995. (DC 4.) Applicant continued to become intoxicated on weekends with her then-fiancé, but this diminished over time. Since May 2000, Applicant has consumed alcohol only on special occasions.

Applicant's husband is also a reformed drug user. (DC 6.) He has remained abstinent from illegal substances for three

years, and Applicant testified credibly that her husband does not intend to return to the use of drugs. (MC 7.) He has a full-time job, and he has received commendations for excellent performance. He communicates very well with Applicant in their marriage, and she is convinced his sobriety is genuine. In 1995, Applicant and her husband were involved in one incident of serious misconduct fueled primarily by her then-fiance's former drug use and Applicant's anger at his refusal to quit. This was an isolated event which caused Applicant and her husband to re-evaluate their lifestyle. Applicant's husband stopped using drugs, and Applicant severely curtailed her use of alcohol. (MC 5.)

Since 1995 Applicant and her then-fiancé have married and they show strong evidence of reform, rehabilitation and a stable marriage. Applicant is a respected and reliable employee in the defense industry, and her husband is a full-time worker for a moving company. They now own a home, and they are responsible citizens. Applicant's 1997 employment discharge for a minor cash shortage does not diminish her evidence of good character and trustworthiness. The "whole person concept" has been considered, and Applicant brings herself favorably within the enumerated factors.

On balance, it is concluded the Government has met its burden of proof under each subparagraph of the SOR. For her part, Applicant has introduced persuasive evidence in refutation, mitigation, and changed circumstances justifying an award of clearance.

FORMAL FINDINGS

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

Paragraph 1. Personal Conduct: For the Applicant.

Subparas. 1.a.-1.d.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

Burt Smith

Administrative Judge