

DATE: June 29, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-19288

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's use of marijuana from age 13 to 19 is mitigated by seven years of abstinence and a demonstrated intent not to use in the future. Her financial difficulties, which arose during her marriage and were compounded by her divorce, are mitigated by her discharge in bankruptcy and her current sound financial status. However, she has not mitigated her falsification of her Security Clearance Questionnaire (SF 86) wherein she omitted her drug use because she did not want to lose her job. Clearance is denied.

**STATEMENT OF THE CASE**

On September 16, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline E (Personal Conduct), Guideline F (Financial Considerations), and Guideline H (Drug Involvement). The SOR informed Applicant that, based on information available to the government, DOHA adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance. [\(1\)](#)

On October 21, 2003, Applicant submitted a notarized response to the SOR (Answer) wherein she admitted all of the allegations and requested a hearing. The case was assigned to me on March 22, 2004, and DOHA issued a notice of hearing setting this case for May 20, 2004. All parties appeared as scheduled and the government presented nine exhibits (GE 1 through 9). Applicant testified in her own behalf. I left the record open after the hearing to allow Applicant time to provide supplemental information. On June 7, 2004, I timely received Applicant's Exhibit (AE), which I have admitted without objection by Department Counsel. DOHA received the transcript (Tr) on May 28, 2004.

**FINDINGS OF FACT**

After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact:

Applicant is 25 years old and employed as a document specialist by a defense contractor for whom she has worked since 1998. When she was first hired, she worked as a courier and only required access to sensitive areas. In her current capacity, she requires a Top Secret clearance. She currently holds an interim Secret clearance. [\(2\)](#)

Applicant is one of five children, but spent virtually all of her life until age 18 in foster care. Her father was in prison and her mother had drug and alcohol problems. Applicant estimates she lived in over 30 foster care homes between ages 2 and 18. She attended school through the 11<sup>th</sup> grade, then obtained her graduate equivalency degree (GED) in September 1998. She has taken several college courses since receiving her GED. Applicant is the sole provider for her nine-year-old son. [\(3\)](#)

Applicant began using marijuana when she was 13 years old. She estimates she used on average two or three times a month until she stopped for about a year in 1994. She resumed her marijuana use in late 1995 at about the same rate as before until her last use in 1997 at age 19. She purchased small amounts of marijuana for personal use between 1994 and 1997, and estimates she spent about \$200 on marijuana over that period. [\(4\)](#)

Applicant married in January 1996, but she and her husband separated in 1998 because they were not getting along and because he used drugs. They have since finalized an uncontested divorce. The couple accrued a great deal of debt while they were together. When they divorced, each became responsible for their individual debts. Unfortunately, because Applicant had good credit when they married, most of the debts were in her name. After they separated, Applicant added to her financial woes by misusing her credit as she tried to support her and her son. [\(5\)](#) In October 2002, Applicant filed for Chapter 7 bankruptcy protection declaring over \$56,000 in liabilities against about \$3,600 in assets. Aside from delinquent state motor vehicle administration and tuition accounts, her debts were discharged in February 2003. She has since paid the other two debts. Applicant currently manages her finances through a monthly budget and other strategies she learned about when she attended a personal financial management class through her church. She currently has a positive monthly cash flow of about \$300 each month. [\(6\)](#)

Applicant has worked at various jobs, full- and part-time, since she was 16 years old. In September 1997, she was fired from her sales job at a camera store because she was suspected of having taken money from the cash register. Applicant denied any wrongdoing and it was eventually determined she had done nothing wrong. She also held a second part-time job in the same shopping mall at the time so was not overly concerned about losing the camera store job. In October 1997, Applicant left her job as a security guard without giving her employer any notice. However, there is no indication her departure was due to any adverse circumstance or conduct. She simply had found a better job and did not think to give her old employer any notice. [\(7\)](#)

Shortly after she went to work for her current employer in 1998, Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) to have access to sensitive areas and materials. In April 1999, because her employer's contract now called for Top Secret access, she submitted a Security Clearance Application (SF 86). In response to questions in both documents asking if she had used illegal drugs in the preceding seven years, Applicant answered "no" despite having smoked marijuana as recently as 1997. Applicant also answered "no" to questions asking if she had ever trafficked in drugs for her own profit or that of another. She acknowledges deliberately omitting this information because she was afraid she would lose her job if she disclosed her drug use. [\(8\)](#)

Applicant was interviewed by Defense Security Service (DSS) agents twice as part of her background investigation. After her first interview in September 1999, Applicant went to her boss and told him about her drug use. She claims she is not the same person who used drugs in her teenage years or who lied about it when she filled out her questionnaires. In part this is due to her own maturation - she is now 25 years old, with a stable life style and a failed marriage behind her. She also credits her own spiritual growth and involvement in her church with helping her resolve her past difficulties and to understanding the import of her falsifications. [\(9\)](#)

## **POLICIES**

The Directive sets forth adjudicative guidelines [\(10\)](#) to be considered in evaluating an Applicant's suitability for access to

classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude Guideline E (Personal Conduct), Guideline F (Financial Considerations), and Guideline H (Drug Involvement) are the relevant adjudicative guideline to be applied here.

### **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(11)</sup> for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.<sup>(12)</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.<sup>(13)</sup>

### **CONCLUSIONS**

**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.<sup>(14)</sup> Here, the concern centers on questions about Applicant's truthfulness; specifically, the government has established a *prima facie* case for disqualification by showing Applicant deliberately omitted from her April 1999 SF 86 information about her past drug use. She has acknowledged falsifying her answer to SF 86 question 27 (SOR 2.a) because she did not want to risk losing her job. She also answered "no" to question 29 seeking information about drug dealing or trafficking for personal profit; however, the record shows (and Department Counsel has conceded<sup>(15)</sup>) that Applicant never sold drugs and that her only purchases were in small amounts for personal use, not for re-sale to make money.

The government also alleges Applicant's personal conduct is in question because she was fired from her employment at a camera store in 1997 (SOR 2.c) and because she failed to give notice to her employer when she left her security guard job to take a better job elsewhere. (SOR 2.d) While being fired from a job may raise a question as to Applicant's trustworthiness, it is an unchallenged fact that she did nothing to warrant being fired. This mitigates the government's concerns. Further, the fact she left a job without giving notice, absent some information (not present in this record) showing she did so under adverse circumstances, is not of security significance. I conclude for Applicant regarding SOR 2.b, 2.c, and 2.d; however, Guideline E Disqualifying Condition (DC) 2<sup>(16)</sup> applies to SOR 2.a.

There is no basis for application of any of the Guideline E mitigating conditions (MC). Only MC 2<sup>(17)</sup> and MC 3<sup>(18)</sup> might apply here, but MC 3 fails because Applicant waited until she was interviewed by a DSS agent in September 1999 to correct her April 1999 SF 86 omission. And while she has subsequently provided a full accounting of her drug use and her falsification is over five years old, I cannot apply MC 3 to SOR 2.a because this is not her only instance of falsification. Even though it was not alleged in the SOR, the fact she omitted the same information from her SF 85P in early 1998, less than a year after her last use of marijuana cannot be ignored. I conclude Guideline E against the Applicant.

**Guideline F (Financial Considerations).** A security concern arises when it is shown a person is an individual is unable

or unwilling to meet their financial obligations, thus being at risk of having to engage in illegal acts to generate funds. (19) The government has established a prima facie case for disqualification by showing the Applicant accrued more than \$56,000 in debts she could not pay. Only through Chapter 7 bankruptcy was she able to resolve her debts. Guideline F DC 3 (20) applies here. However, Applicant found herself in financial difficulty in part due to the fact she inherited sole responsibility for most of the debts generated during her marriage, which ended sometime after she submitted her SF 86 in April 1999. While she admits to adding to her financial problems through her misuse of credit after her divorce, she is now on sound financial ground, having resolved her difficulties through bankruptcy and through her own initiative to pay two debts not dischargeable in bankruptcy. She has increased her financial management skills through a church-based class and she exhibits a good command of her income and expenses. Guideline F MC 3, (21) MC 4, (22) and MC 6 (23) apply here and I conclude Guideline F for the Applicant.

**Guideline H (Drug Use).** A security concern arises when it is shown a person has used or is otherwise involved with illegal drugs, including controlled substances. Such conduct indicates an inability or unwillingness to abide by the laws prohibiting such conduct; and drug use itself may result in lapses in judgment increasing the risk of unauthorized disclosure of sensitive information. (24) Department Counsel has established a prima facie case for disqualification under this guideline. Applicant used marijuana several hundred times between 1991 and 1997, her teenage years. She also purchased small amounts of marijuana for personal use spending about \$200 over the same six years. Guideline H DC 1 (25) and DC 2 (26) apply here.

By contrast, she has not used marijuana or any other illegal substance since 1997. She now has a steady job and is trying to better herself through her college course work and involvement in her church. Her drug use also occurred during her adolescence, which appears to have been more demanding than most. Guideline H MC 1 (27) and MC 3 (28) apply here. On balance, I conclude Guideline H for the Applicant.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. I am impressed by the fact Applicant has overcome significant obstacles to achieve a measure of stability in her life. I found her credible and forthright in her testimony, and she is to be commended for resolving her drug and financial problems. As for her falsification of her SF 86, were this the only instance of this conduct, I would not hesitate to find she had mitigated the government's concerns. However, because she also falsified her SF 85P, reasonable doubts remain about her judgment and reliability. Applicant had the burden of satisfactorily resolving those doubts, but with regard to Guideline E, the record does not support a conclusion she has met her burden.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Drug Involvement (Guideline H): FOR THE APPLICANT

Paragraph 1.a For the Applicant

Paragraph 1.b For the Applicant

Paragraph 2, Personal Conduct (Guideline E): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: For the Applicant

Subparagraph 2.d: For the Applicant

Paragraph 3, Financial Considerations (Guideline F): FOR THE APPLICANT

Subparagraph 3.a: For the 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.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. GE 1; Tr., p. 9, 57 - 58.
3. GE 1; Tr., p. 7, 51 - 54.
4. GE 5; Tr., p. 67
5. GE 4; Tr., p. 63 - 64.
6. GE 6, GE 7, GE 8, AE A; Tr., p. 42 - 47; 64 - 69.
7. Answer; GE 5; Tr., p. 36 - 39.
8. GE 1, GE 2, GE3, GE 5; Tr., p. 41, 59.
9. Tr., p. 41, 59 - 60.
10. Directive, Enclosure 2.
11. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
12. *See Egan*, 484 U.S. at 528, 531.
13. *See Egan*; Directive E2.2.2.
14. Directive, E2.A5.1.1.
15. Tr., p. 70 - 71.
16. Directive, E2.A5.1.2.2. 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;
17. Directive, E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
18. Directive, E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;
19. Directive, E2.A6.1.1.

20. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
21. Directive, E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, *divorce* or separation); (emphasis added)
22. Directive, E2.A6.1.3.4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
23. Directive, E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
24. Directive, E2.A8.1.1.1.
25. Directive, E2.A8.1.2.1. Any drug abuse;
26. Directive, E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;
27. Directive, E2.A8.1.3.1. The drug involvement was not recent;
28. Directive, E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;