

DATE: July 18, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-24480

## DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

### APPEARANCES

#### FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant, a 47-year-old secretary for a defense contractor, seeks a security clearance. Applicant has a history of drug use and criminal convictions. However, Applicant failed to disclose this information on her security clearance application. Applicant failed to mitigate the disqualifying conditions exemplified by her conduct, and did not demonstrate it was in the national interest to grant her a clearance. Clearance is denied.

### STATEMENT OF THE CASE

On October 15, 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. DOHA 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 1, 2002, Applicant responded to the SOR allegations. She requested her case be decided on the written record in lieu of a hearing.

On April 8, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to the Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM by the June 4, 2003 due date. She attached 15 items to support her contentions in her response. The case was assigned to me on June 9, 2003.

## FINDINGS OF FACT

Applicant admitted all of the SOR allegations. She stated her alleged falsifications in subparagraph 3h are not felonies. The SOR alleges them as violations of 18 USC 1001. Those admissions to the allegations 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 47-year-old administrative assistant employed by a defense contractor on a government facility. She is separated from her husband, has one child, and two grandchildren.

Applicant completed her security clearance application on April 13, 2000. On that application Applicant answered Question 27 that in the past 7 years she had not used any illicit drugs or substances, which included marijuana. That answer was false because Applicant used marijuana from 1993 to 1995 and now admits the use. (Item 4 at 1 and 6)

Applicant also answered Question 24 on her security clearance application falsely by stating "Yes" but not listing her 1975 DUI arrest, and her 1980 arrest for marijuana possession and possession of alcohol in a public park. (Item 4 at 6)

Based upon her admissions, Applicant has a pattern of marijuana use from 1971 to 1978, and 1993 to 1995. She also used cocaine from 1986 to 1990, and mescaline from 1971 to 1973 with varying frequencies. She took Valium from 1994 to 1996, for which she did not have a proscriptio The Valium was given her by a neighbor. (SOR; Answer at 1-3)

Applicant has several arrests and convictions in her history, all of which she has admitted. She was arrested for shoplifting in 1974, convicted and fined \$30.00. In 1981 the local police arrested Applicant for shoplifting, then she was convicted and fined \$275. In 1985 she was arrested for shoplifting and receiving stolen goods. She was found guilty of the receipt of stolen goods, put on a pre-trial intervention for the shoplifting, and fined \$750 and five years of probation. Next, later in 1985, she was again arrested for shoplifting and found guilty, with a punishment of one year probation and \$425 in fines and court costs. Lastly, Applicant was arrested in 1988 for receiving stolen goods and shoplifting. She pled guilty to receipt of stolen property and the shoplifting charge was dismissed. She was fined \$205. (Item 3 at 1-8, Item 5 at 1-11, Item 6 at 1-5, Items 7b to 7h)

Applicant was arrested in 1996 for assaulting a police officer, obstruction of justice, and disorderly conduct. The charges arose out of a domestic disturbance at her home between herself, her boyfriend, and a neighbor. Alcohol was consumed by the participants. The paramedics were called to attend to several injuries, including bleeding noses. Applicant denies her actions and blames the police. Having read all the statements, I find the three police accounts more credible. Furthermore, the fact that a neighboring police force had to be summoned to assist the arresting officers in handling Applicant and the other party at the hospital to which she was taken for treatment. In 1997, Applicant was found guilty of simple assault in this situation, and fined \$655, including court costs. (Response at 1-6, 1-19, Item 7a at 1-21)

Applicant declares her intention not to be involved with alcohol and drugs in the future, and her record since 1997 supports that assertion. She is ashamed of her shoplifting history, and does not engage in that criminal activity any longer. She states she works and goes home now. Her life has settled down from the dysfunctional state it was in previously, due in part to her alcoholic father. She submitted five character support letters from her fellow employees about the excellent work she does. (Item 3 at 1-14, Item 5 at 6)

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* At 527. The president has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing he use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b)

(Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive Para E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec . Or. 12968 Section 3.1(b).

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 E - Personal Conduct:**

(A) 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:

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.

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

(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;

(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;

(5) A pattern of dishonesty;

(C) Conditions that could mitigate security concerns include:

(2) The falsification was an isolated incident, was not recent, and the individual

has subsequently provided correct information voluntarily;

(5) The individual has taken positive steps to significantly reduce or eliminate

vulnerability to coercion, exploitation, or duress.

### **Guideline H - Drug Involvement**

(A) 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

(B) Drugs are defined as mood and behavior-altering substances and include:

(1) 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); and

(2) Inhalants and other similar substances.

(C) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

(1) Any drug abuse (see above definition);

(2) Illegal drug possession, including purchase.

(E) Conditions that could mitigate security concerns include:

- (1) The drug involvement was not recent;
- (3) A demonstrated intent not to abuse any drugs in the future.

### **Guideline J - Criminal Conduct**

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

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

(1.) Allegations or admissions of criminal conduct, regardless of whether the person

the person was formally charged;

(2.) A single serious crime or multiple lesser offenses.

(C) Conditions which could mitigate security concerns include:

(1.) The criminal behavior was not recent;

(6.) There is clear evidence of successful rehabilitation.

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:

**Guideline E - Personal Conduct:** I conclude the Government established by its evidence and Applicant's admissions the validity of the allegations as set forth in subparagraph 1.a. and 1.b. and the subparagraphs thereto. Applicant deliberately failed to disclose her drug involvement on the personnel security questionnaire submitted in April 2000 in response to Question 27. She also failed to disclose the arrests for DUI in 1975 and the 1980 arrest for marijuana and alcohol possession in a park in response to Question 24 on the security clearance application form. 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 his personnel security questionnaire or deliberately provides false or misleading information concerning relevant and material matters to an investigator in connection a personnel security determination. Through Applicant's admissions, the Government established a prima facie case that Applicant deliberately falsified her security clearance application in 2000. Therefore, Disqualifying Conditions (DC) 2, 4, and 5 apply. Applicant's pattern of alcohol and drug use and possession in the 1970s through the 1990s is information the Government needs upon which to make an informed decision on Applicant's request for a security clearance.

By admitting her marijuana use, the taking of the Valium without a prescription, the DUI arrest, and her 1980 arrest, Applicant has taken positive steps to reduce her vulnerability to coercion, exploitation, or duress, especially since the passage of at least the last six years since any involvement. (Mitigating Condition (MC) 5). The falsification was only on the security clearance application filed in 2000, and she did provide correct information when asked by the investigator. However, two falsifications on the same form cannot be considered isolated, but rather a pattern. Question 24 asks if the Applicant has ever been convicted of any offense relating to alcohol or drugs, and she lists the 1996

altercation with the police at her home, but does not disclose the 1975 and 1980 arrests. Then, on Question 27 she failed to disclose the past seven years of drug use. Therefore, Applicant has not sufficiently mitigated the security concerns raised by her deliberate falsifications. My finding is against Applicant.

**Guideline H - Drug Involvement.** The Government established its case by its evidence and Applicant's admissions. Under Guideline H, an applicant's illegal involvement with drugs raises questions regarding his willingness to protect classified information. I conclude Disqualifying Conditions (DC) 1 and 2 apply here. A security concern may exist if an applicant uses or purchases illegal drugs such as marijuana.

The last alleged drug use was in 1996 with the use of Valium that was not prescribed. Prior to that use, the latest drug use was cocaine in 1990. Obviously, from the evidence, the 1970s and 1980s were the time Applicant used the marijuana, mescaline, and less frequently the cocaine. Therefore, the drug use is not recent. (MC 1) Applicant has demonstrated her intent not to use drugs in the future. Accordingly, the finding is for the Applicant.

**Guideline J - Criminal Conduct.** The Government established its case by the evidence it presented and Applicant's admissions. DC 1 and 2 apply. Applicant committed five incidents of shoplifting from 1974 until 1988. She also had a DUI in 1975, the marijuana possession and alcohol possession in a public park charge in 1980, and her falsifications on her security clearance applications were violations of 18 USC 1001, which make it an offense to give false information to the federal government. Her altercation with the police took place in 1996, and her conviction in 1997 for simple assault.

The MC 1 could apply, if one considered her last offense the falsification and that occurred three years ago. The successful rehabilitation allowed in MC 6 is shown by the absence of any arrests or convictions since 1997. That conclusion is counter-balanced by her falsification in 2000 which shows a continuing pattern. Nevertheless, Applicant has not sufficiently mitigated the security concerns raised by her deliberate falsification. The finding is 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 E: Against Applicant

Subparagraph 1.a.: Against Applicant

Subsubparagraph 1.a.1: Against Applicant

Subsubparagraph 1.a.2: Against Applicant

Subparagraph 1.b.: Against Applicant

Subsubparagraph 1.b.1: Against Applicant

Subsubparagraph 1.b.2: Against Applicant

Paragraph 2 Guideline H: For Applicant

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Paragraph 3 Guideline J: Against Applicant

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against Applicant

Subparagraph 3.e.: Against Applicant

Subparagraph 3.f.: Against Applicant

Subparagraph 3.g.: Against Applicant

Subparagraph 3.h.: 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. Clearance is denied.

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Philip S. Howe

Administrative Judge

1. The Government submitted twelve documents organized into four items in support of the SOR.