

DATE: October 16, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24755

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 1998, the Applicant provided false information in order to rent a boat slip. In 1999, she provided false information in a sign sworn statement. Since her false answers are serious misconduct there should be compelling reasons before a clearance is granted or continued. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from this conduct. Clearance is denied.

STATEMENT OF THE CASE

On September 20, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. On December 1, 2002, the Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

The Applicant received a complete copy of the file of relevant material (FORM) dated June 23, 2003, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On August 4, 2003, the Applicant's responded to the FORM. I was assigned the case on September 10, 2003. The Department Counsel presented 13 exhibits (Items).

FINDINGS OF FACT

The SOR alleges personal conduct, Guideline E. The Applicant admits: being charged with spousal abuse and assault/battery-family in 1992, but denies abusing her husband; using her dependent military identification card, but denies any wrongdoing; being released from her employment, but asserts it was a wrongful discharge; being released from her employment, but denies forging her employer's signature; falsifying sponsor information to obtain a boat slip at a marina, but alleges she was eligible to lease the slip, which she paid for in full; she forgot about trying cocaine, but denies intentional falsification; left a job after one month, but asserts her commissions receivable were to be applied

against the advance she had received. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 43 years old, has worked for a defense contractor since October 1998, and is seeking a security clearance. Her work performance is superior, displaying initiative, and self-taught skills. She has received a letter of commendation for her superior duty performance during 1999 and 2000, which cited the Applicant's exceptional motivation and dedication. Her supervisor has complete trust and confidence in her.

In October 1991, the Applicant married a retired military member and in June 1992 legally separated from him. In August 1992, an arrest warrant was issued against the Applicant's spouse for placing her in reasonable fear of death or bodily injury. The warrant was executed in early September 1992. That same month, the Applicant, when her husband was not home, went with a friend and a truck to remove her property from the marital abode. She discovered her husband had changed the locks and she broke a garage door window to gain entry. Her husband returned and a verbal argument commenced. She left before the police arrived. The Applicant admits being charged with spousal abuse in September 1992 and being ordered to stay out of the residence for six months. For the same incident, the Applicant was also charged with assault and battery against her husband. (Item 7) However, this charge was dismissed.

The Applicant's last contact with her husband occurred in 1992. Following their legal separation, her husband moved to another state. In June 1995, her husband obtained a divorce after service was made by publication in a local newspaper. Her husband stating he could not locate the Applicant to serve her with notice of the divorce. The newspaper was in the state where the husband lived. In September 1999, the Applicant first learned of the divorce.⁽²⁾ When notified of the divorce she stopped using her military dependent ID card and returned it to proper authorities. She had used her military dependent ID card from June 1995 until September 1999.

In 1996, she was fired from a small family owned business. The stated reasons for termination were: a loss in confidence in the Applicant's ability; a decrease in work quality; and attitude. Just prior to termination, the Applicant had received an annual salary increase for her work performance. The Applicant speculates the owner's daughter did not want her (the daughter's) husband working with the Applicant. Termination occurred after the Applicant had lost weight and started dressing differently. The Applicant was replaced by the owner's other daughter.

In March 1997, the Applicant wrote and signed a letter stating she was authorized, as the office manager, to enter into and alter agreements on her employer's behalf. It has been alleged that beneath her signature appeared the purported signature of a principle of the company. The Applicant does not know how this signature came to be on the letter. In June 1998, fifteen months after she wrote the letter, the Applicant was fired from her job following allegations of a forged signature on the letter, and she was threatened with criminal action. The Applicant denies forging the signature and believes the grounds for termination were unfounded.

In October 1998, the Applicant rented a boat slip for six months. Active duty, retired military, or dependents of military individuals were authorized to rent the slip. At that time, the Applicant possessed her dependent ID card, and believed she was a proper military dependent.⁽³⁾ However, there was a waiting list for the boat slip and active duty had priority over retired dependents. The Applicant contacted her former spouse--from whom she was divorced in October 1988--and, because he was active duty military, asked if she could use his name to rent the slip. She then listed her ex-husband as the owner of the boat, providing his name, rank, and duty location when she applied for the slip. Her ex-husband was not the owner of the boat.

In October 1998, the Applicant completed a Security Clearance Application, SF 86. In response to question 27, the Applicant stated four or five years earlier--in 1993 or 1994--she had used marijuana several times, but failed to indicate she had used cocaine one time during the same time period. When she completed the form, she had forgotten about the single use of cocaine, which had occurred years earlier.

In 1993, The Applicant had worked one month as an independent contractor (IC). Her employment contract required all ICs, when terminated or when they left voluntarily, to repay any difference between sales commissions earned and advance payments they had received. The Applicant had received a \$1,200 advance. There was no offset for the

commissions earned.

Following her brief employment as an IC, the Applicant worked from May 1993 through May 1994 for another company. The Applicant was sued over her employment as an IC. In September 1993, Mr. A, the company's president of her then employer, wrote a letter to the general district court stating heavy office workload would prevent the Applicant from attending the fourth coming court date--six days later--and asked that a continuance be granted. There is no indication the continuance was granted. A judgment order was entered indicating the parties reached a "compromise and settlement prior to the start of court." (Item 10) The Applicant appealed the judgment and her employer cosigned on the surety bond, which was filed with the court. The Applicant lost her appeal and the surety bond was used to pay the judgment.

In March 1995, Mr. A wrote the Applicant stating he was "shocked" the previous summer when the bonding company demanded \$1,500 from him. (Item 9) He wanted the Applicant to pay the money and asked her to call him. The letter does not explain why it took from the summer of 1994--when the judgement was paid from the surety bond--until March 1995 when he sent her a letter concerning the payment of the debt. The company could have easily located her because her brother was working for the company. He currently is a general superintendent for the company. (Item 13, p 4) At the time of the appeal, the Applicant was dating and living with Mr. B, the company's general manager, to whom she later became engaged. (Item 6, p 8)

Mr. A and Mr. B discussed the debt and Mr. A told the Applicant to forget about the debt, because Mr. B would pay the debt. Mr. B, then the Applicant's boyfriend or fiancé, told her he had talked with Mr. A and she did not have to repay the debt. Mr. B paid the debt. (Item 13, p 3) The Applicant does not intend to pay this bill. In September 1999, the Applicant made a signed, sworn statement in which she stated, ". . . I have never been contacted by (Mr. A) concerning the money owed, nor has he ever placed any legal action against me for repayment." (Item 12, p 5) The Applicant denies any "personally contact" by Mr. A concerning the debt.

In January 2002, the Applicant made a signed, sworn statement in which she stated:

When I stated in my Sep 99 interview that I have not been contacted by (Mr. A) regarding the money & the[n] stated in my Feb 00 interview that I had. I guess I was not totally truthful. I feel this was a misunderstanding.

I have not been personally contacted by (Mr. A) though I had received one letter from him regarding the money owed.

(Item 6, p10)

In July 2000, the Applicant purchased a home. In the fall of 2000, the Applicant started attending college in addition to working full time. She is working on her bachelor's degree and maintains a 3.6 GPA. She does volunteer work with the Salvation Army.

POLICIES

The Adjudicative Guidelines in 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 determinations that are clearly consistent with the interests of national security. In making 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 in the context of factors set forth in section E 2.2.1. of the Directive as well. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts proven must have a nexus to an Applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most

pertinent to this case:

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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

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

1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances. (E2.A5.1.2.1.)
3. 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 security or trustworthiness determination. (E2.A5.1.2.3.)

Conditions that could mitigate security concerns include:

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability. (E2.A5.1.3.1.)
2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. (E2.A5.1.3.2.)

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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.* 484 U.S. 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 judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, at 531. All that is required is proof of facts and circumstances which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant then has the burden of establishing her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. In September 1999, the Applicant made a signed, sworn statement in which she said she had not been contacted by a certain person concerning the repayment of \$1,200. However, in March 1995, she had received a letter from this individual asking her to repay the debt. Because of this false statement, Disqualifying Condition (DC) 3-(4) applies. In October 1998, the Applicant providing false information to obtain a boat slip. DC 1-(5) applies to this unfavorable information.

In September 1992, the Applicant and her then spouse got into a verbal argument. The Applicant had previously brought assault charges against her spouse. As a result of this domestic dispute, the Applicant was orders to remain out of the residence for six months and the assault and battery charge was dismissed. There is nothing in the record that contradicts this was anything more than the verbal argument alleged by the Applicant. In this particular case, these domestic charges are not pertinent to a determination of judgment, trustworthiness, or reliability. Mitigating Condition (MC) 1-(6) applies and I find for the Applicant as to 1.a. and 1.b.

The Applicant's husband moved to another state, petitioned for divorce by putting notice in a local paper, and was granted a divorce in 1995. The Applicant did not become aware of the divorce until September 1999. Not knowing the divorce had occurred, the Applicant continued to use her military dependent ID card. There is no showing this conduct involved questionable judgment, trustworthiness, reliability, or an unwillingness to comply with the rules and regulations. I find for the Applicant as to SOR subparagraph 1.c.

In 1996, the Applicant was fired from her job. The reasons listed were: loss of confidence in her ability, a decrease in the work quality, her attitude, and being rude to employees. Just prior to the termination action she had received a salary increase. She was terminated after she lost weight and started dressing differently. She was replaced by another of the owner's daughters. I accept the Applicant's contention the owner's daughter did not wish her working with the daughter's husband and she was terminated for that reason and not for poor duty performance. Even if the Applicant was terminated for the reasons specified, this does not show conduct involving questionable judgment, trustworthiness, reliability, or an unwillingness to comply with the rules and regulations. I find for the Applicant as to SOR subparagraph 1.d.

The Applicant admits she was fired from her work in June 1998, but denies forging her employer's signature. The Government has failed to offer sufficient evidence of the forgery. Therefore, I find for the Applicant as to SOR subparagraph 1.e.

In 1998, the Applicant rented a boat slip. At that time she believed she was a proper military dependent of a retired military officer. As such, she was entitled to rent a boat slip at the military marina. However, because of the waiting list which gave priority to active duty members she contacted her former spouse and asked him if she could use his name to get the slip. In the slip data she provided her ex-husband's name, rank, and duty location as the owner of the boat. This was not true. Even though this was a difficult time in the Applicant's life, she chose to provide false information. I find against the Applicant as to SOR subparagraph 1.f.

In 1998, the Applicant completed an SF 86. In response to question 27, concerning illegal drug use, she indicated she had use marijuana several times between ay 1993 and March 1994. On one occasion, during the same time period, she used cocaine once, but failed to list that usage in response to the question. The Applicant stated she forgot about her cocaine usage when she completed the SF 86 and denies any intentional falsification. The Applicant's failure to disclose the single use of cocaine does not, in itself, prove she did so in a deliberate effort to conceal the use from the government.

The Applicant's statements about her intent or state of mind at the time she executed the SF 86 are relevant and material, but not conclusive. An intent to deceive or mislead the government does not require direct evidence and can be inferred from circumstantial evidence, but this is not the case here. When her statement that she forgot about her single cocaine

use when she completed the form is weighted in light of the evidence as a whole, I find her answer to question 27 was not a deliberate omission, concealment, or falsification. Therefore, none of the disqualifying conditions under personal conduct apply. I find for the Applicant as to SOR subparagraph 1.g.

In 1993 the Applicant worked as an independent contractor for one month. Although SOR subparagraph 1.i. alleges the employment contract required the Applicant to be employed for a specific period of time, the contract fails to support this allegation. However, the contract did require the applicant to repay a \$1200 advance at the time she left the company. She alleges she earned sufficient commissions to offset the advancement. In April 1994, a judgment was entered against the Applicant. However, she provided insufficient documentation to support this claim. The judgment order indicates that prior to the start of court the parties reached a compromise in settlement, and the Applicant, the defendant in the suit, agreed to the entry of judgment against her. The plaintiff was awarded \$1200 plus attorney's fees and court costs. The Applicant admits she appealed this matter and lost the appeal.

In March 1995, the cosigner on the bond demanded payment from her. The cosigner was the president of the company she was working for at the time. After she left the company she began dating and later became engaged to the company's general manager. Her then boyfriend paid this debt. She does not intent to repay her exboyfriend for this debt. There is no showing her ex-boyfriend has demanded payment on this debt. Since the judgment was paid by the consigner on the bond, and subsequently the consigner was paid with no demand being made by the ex-boyfriend for repayment by the Applicant. I find for the Applicant as to SOR subparagraph 1.i., which alleges the judgment is an unpaid debt.

In September 1999, the Applicant gave a signed, sworn statement in which she swore she had never been contacted by the cosigner concerning repayment of the \$1,200. This was not true because in March 1995, the cosigner did send the Applicant a letter demanding she repay him the \$1,200 he had to pay on the bond. Although she had not been personally contacted, she certainly had been contacted by letter. Her sworn statement was false. I find against the applicant as to SOR subparagraph 1.h.

The awarding of a security clearance is not a once in a life time occurrence, but is based on current disqualifying and mitigating conditions. In fairness to the Applicant, this decision should not be construed as a determination that the Applicant cannot or will not attain the reform and rehabilitation necessary to justify the award of a DoD security clearance. To the contrary, her mitigating evidence suggests a sound potential for positive reform and outstanding accomplishments in the defense industry. However, because the Appellant meets the disqualifying conditions and none of the mitigating conditions concerning her 1999 false sworn statement and 1998 false statement concerning boat ownership, the personal conduct is resolved against the Appellant. A clearance at this time is not warranted.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Personal Conduct, Guideline E: AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: 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. Clearance denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. Although the Applicant received a letter from her ex-husband's attorney concerning the divorced, which was dated June 1999, it was sent to the address of the Applicant's parents and the record is silent as to when the Applicant received it.
3. The Applicant did not receive notification of her divorce until September 1999.
4. DC 3. 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 security or trustworthiness determination. (E2.A5.1.2.3.)
5. DC 1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances. (E2.A5.1.2.1.)
6. MC 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability. (E2.A5.1.3.1.)