

DATE: February 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00759

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 55-year-old engineering technician for a defense contractor used and/or purchased marijuana and/or methamphetamines from 1987 to 1997. She was charged with and pleaded guilty to Possession of Methamphetamines, a felony, and Possession of Drug Paraphernalia, a misdemeanor. Sentence was deferred and Applicant successfully completed a diversion program, as a result of which the criminal case was dismissed. Mitigation has been established by the passage of time and demonstrated rehabilitation. Clearance is granted.

STATEMENT OF THE CASE

On August 8, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On August 28, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on October 30, 2002. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. The Applicant's response, dated December 10, 2002, was timely received and Department Counsel did not object to any of its contents. The matter was assigned to me for resolution on December 13, 2002.

FINDINGS OF FACT

Applicant is a 55-year-old engineering technician employed by a defense contractor that is seeking a security clearance for Applicant in connection with her employment. In her response to the SOR, Applicant *admitted* all six allegations (Government Exhibits (GX) 3).

After considering the totality of the evidence derived from the FORM and its attachments, including but not limited to Applicant's response to the SOR, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline H (Drugs)

Applicant:

- 1.a. Used marijuana on numerous occasions from approximately August 1987 to March 1997.
- 1.b. Used methamphetamines on numerous occasions from approximately 1992 to March 1997.
- 1.c. Purchased marijuana from approximately 1987 to 1997.
- 1.d. Purchased methamphetamines from approximately 1992 to 1997.
- 1.e. Used the illegal drugs cited above in 1.a and 1.b. while possessing a security clearance between 1990 and 1994.
- 1.f. Was charged on March 3, 1997, in State A, with Possession of Methamphetamines, a felony, and with Possession of Drug Paraphernalia, a misdemeanor. She pleaded guilty to both charges. Sentence was deferred and she was ordered into a drug diversion program. She successfully completed the program and, on August 2, 2002, both charges were dismissed. [\(1\)](#)

Guideline J (Criminal Conduct)

- 2.a. The criminal conduct set forth in 1.f., above

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed

that the factors cited above exhaust the realm of human experience or that the factors apply equally

in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct. Because Applicant chose to have this matter decided without a

hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM and applicant's response.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE H (Drugs)

Conditions that could raise a security concern and maybe disqualifying include:

1. Any drug abuse;
2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Conditions that could mitigate security concerns include:

1. The drug involvement was not recent;
3. A demonstrated intent not to abuse drugs in the future. [\(2\)](#)

GUIDELINE J (Criminal Conduct)

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

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.
2. A single serious crime or multiple lesser offenses;

Conditions that could mitigate security concerns include:

1. The criminal behavior cited in SOR 1.f. and 2.a. is not recent, having occurred in March 1997;
2. The single act of criminal conduct alleged in SOR 1.f. and 2.a was an isolated incident in a life of 55 years;
6. There is clear evidence of successful rehabilitation.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses, here based solely on the written record.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of

the potential, as well as the actual, risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the

Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended,

at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Applicant has admitted the accuracy of all allegations, which relate to her drug use and 1997 drug-related conviction, as described in the SOR. In addition to her admissions in response to the SOR, all allegations are independently supported by the remainder of the record evidence (GX 1, GX 3, GX 4, GX 5, and GX 6). I conclude that such conduct clearly has a nexus or connection with Applicant's eligibility to obtain or retain a security clearance.

The remaining issue to be resolved is whether Applicant has adequately demonstrated mitigation of extenuation. The period of her drug abuse appears to have begun when she was about 40 years old and occurred in the context of participating in drug use with her husband, who died in an auto accident in 1988. Her drug use continued as her life had its ups and downs over the next decade and she continued to obtain drugs and use drugs after losing her job and even after obtaining a new position, for which she obtained a security clearance in 1990. Her only response at the time was to limit her drug use to weekends, so that it would not affect her job (GX 3).

Based on the totality of the evidence, I conclude that Applicant's last incident of illegal drug involvement was in March 1997, when she was arrested and subsequently convicted of (1) Possession of Methamphetamines and (2) Possession of Drug Paraphernalia. This was her first and only drug-related contact with the law. Without minimizing the seriousness of any drug-related conviction, I note that sentence in that matter was deferred until Applicant completed a diversion program. She did complete the program and the criminal matter was dismissed on August 2, 2000. The court was satisfied that Applicant had learned the hard lesson of the consequences of drug involvement and that she had her life under control. There is no suggestion of further drug involvement since the March 1997 arrest.

In her response to the FORM, Applicant cited her negative for drugs test result in 1998 and her being able now to function at work and in her private life without any drug or other problems (December 10, 2002 letter from a former employer). Her pastor describes the growth of her "personal commitment and maturity" (December 10, 2002 letter).

While Applicant's drug related misconduct is certainly serious and Disqualifying Conditions 1 and 2 clearly apply, I conclude that they are adequately mitigated by the passage of five years with no apparent relapse, during which time she has demonstrated consistently positive conduct. In the context of a period of drug use that spanned about ten years, five years of abstaining can be considered as "not recent" (Mitigating Condition 1). Mitigating Condition 2 is not applicable because a ten-year period of drug use cannot be considered as an isolated or aberrational event. Mitigating Condition 3

does apply. Applicant has demonstrated her intent not to abuse drugs in the future through five years of abstinence and her documented positive conduct during that period. I conclude from the overall record that Applicant's past drug use is not likely to recur. Likewise, the criminal conviction, again clearly serious, was a singular incident in a long life and, I conclude, is not likely to recur.

DOHA decisions are not an evaluation of a person's loyalty to the United States but of the risks that result from a person's conduct, if that conduct violates one or more of the Guidelines in the Directive. In the present case, the Government's underlying concerns have been mitigated and Applicant's conduct for the past five years show good judgment, reliability, and trustworthiness.

FORMAL FINDINGS

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

Guideline H (Drugs) For 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. For the Applicant

Guideline J (Criminal Conduct) For the Applicant

Subparagraph 2.a. 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 or continue a security clearance for Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. Court records reflect the successful completion of the cited diversion program but they do not mention any diagnosis or evaluation of drug abuse or dependence (GX 7)

2.