

DATE: October 27, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-04966

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The security concerns raised by Applicant's occasional marijuana abuse between 1995 and February 2001 are removed by the absence of drug use since February 2001. However, Applicant's intentional omission of material information from her July 2000 security form has not been mitigated under the personal conduct guideline or the general factors of the whole person concept. Clearance is denied.

**STATEMENT OF THE CASE**

On February 11, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated April 4, 1999, issued a Statement of Reasons (SOR) to Applicant, which detailed 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, and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant filed her Answer to the SOR on arch 3, 2003. <sup>(1)</sup> Applicant elected to have her case decided on a written record. The Government provided a copy of the File of Relevant Material (FORM) on ay 22, 2003. Applicant received the FORM on June 2, 2003. Her response dated June 16, 2003, was received on June 19, 2003. The case was received by the undersigned for decision on July 14, 2003.

**FINDINGS OF FACT**

The following findings of fact are based on Applicant's answer to the SOR, the FORM, and Applicant's response to the FORM. The SOR alleges drug involvement (Guideline H) and personal conduct (Guideline E). Applicant's admissions to all the factual allegations shall be incorporated into the Findings of Fact.

Applicant is 24 years old and employed by a defense contractor as a security receptionist. She seeks a secret clearance.

**Drug Involvement.** Applicant smoked marijuana from January 1995 to November 2000, and then once on February 10, 2001. She started using marijuana because of curiosity. She continued to use the drug because she enjoyed the effect. She purchased the drug approximately 20 to 25 times with a total expenditure of at least \$1,200.00 during the period. She used the drug with friends, her former husband or by herself. Her frequency of use was daily in July 1997 to approximately five times a year. While initially unable to rule out future marijuana use, Applicant decided she would not use marijuana in the future. (2)

**Personal conduct.** Applicant filled out a security clearance application (SCA) on July 11, 2000. She answered "No" to Question 38 (in the last 7 years, have you been over 180 days delinquent on any debt(s)?). A credit bureau report (CBR) dated January 23, 2001 reflects four listed debts (totaling \$8310.00) were over 180 days delinquent when Applicant submitted her SCA in July 2000. Each of the listed debts are identified as joint, signifying that both parties are liable should the account go into default.

Though Applicant claims her omission of the four debts from question 38 was not deliberate, the only explanation she provided for the omission was that the finances were handled by her husband. Even though the debts in subparagraphs 2.a.i). and 2.a.ii). were subsequently deleted from Applicant's credit bureau report on February 21, 2001, Applicant failed to explain why she did not list these two debts on her SCA in July 2000. Though Appellant denied in her sworn statement (March 1, 2001) she was responsible for the auto debt in 2.a.iii), she indicated in response to question 35 (in the last 7 years, have you had any property repossessed for any reason?) of the form that the auto was repossessed in February 1997, with an outstanding liability of approximately \$10,000.00, and that she intended to resolve the debt once the creditor contacted her. Given her disclosure when the auto was repossessed, how much was owed at the time of repossession, and what she planned to do when the creditor contacted her, I find she knew the auto debt was more than 180 days delinquent when she responded "No" in response to question 38 of the SCA.

Finally, Applicant provided no explanation for omitting department store account identified in 2.a.iv). from her SCA in July 2000. The CBR reflects this debt became delinquent in 1996.

**Character evidence.** Applicant indicated in her answer she has been trying to resolve her debts since her divorce in March 2001. Regarding documented evidence showing an effort to resolve any debts, Applicant made a payment of \$150.00 payment on June 13, 2003 to the creditor identified in 2.a.iv).

## POLICIES

Enclosure 2 of the Directive sets forth disqualifying and mitigating conditions which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

### **Drug Involvement**

Disqualifying conditions(DC):

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

Mitigating Conditions (MC):

1. The drug involvement was not recent;
2. The drug involvement was an isolated or aberrational event;

3. A demonstrated intent not to abuse any drugs in the future.

### **Personal Conduct**

Disqualifying conditions (DC):

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.

Mitigating conditions (MC):

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 16 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish a *prima facie* case under drug involvement (Guideline H) and personal conduct (Guideline E) which establishes doubt about a person's judgment, reliability and trustworthiness. Then, the Applicant has the ultimate burden of demonstrating with evidence in refutation, explanation, mitigation, or extenuation that it is clearly consistent with the national interest to grant or continue her security clearance.

### **CONCLUSIONS**

**Drug involvement.** Improper or illegal involvement with drugs impairs social or occupational functioning, and may interfere with the individual's willingness or ability to protect classified information. Applicant's occasional use of marijuana from January 1995 to February 2001 constitutes drug abuse of a mood or behavior-altering substance as defined by DC 1. Applicant's marijuana abuse also falls within the scope of DC 2 as she purchased the drug 20 to 25 times and spent at least \$12,000.00. Though curiosity sparked Applicant's initial use of the drug, she continued to use the drug because she liked it, and used it in social settings, or with her former husband, or by herself.

Because her marijuana abuse was occasional rather than isolated, and lasted over five years, Applicant cannot take

advantage of MC 2. However, Applicant is entitled to limited mitigation under MC 1 as there is no evidence of use since February 10, 2001, and even though Applicant could not definitively state on February 15, 2001 she did not intend to use drugs in the future. Given Applicant's stated intention on March 1, 2001 to refrain from future drug use, coupled with the absence of drug use in more than two years, I find for Applicant under the drug involvement guideline.

**Personal conduct.** Intentionally concealing relevant and material information from a security form represents questionable judgment and dishonesty. Applicant's deliberate failure to disclose four debts over 180 days delinquent from question 38 of her security form establishes adverse behavior within the scope of DC 2, because the concealment provides an inaccurate picture of Applicant's financial problems, even though she listed her repossession under question 35 of the form. The omission of the four debts is material because the Department of Defense has a legitimate right to know about a person's financial background, specifically whether they pay their bills in a timely fashion.

The three potentially applicable mitigating conditions have been carefully considered, however, none are applicable to the intentional falsification. MC 1 may apply to fact situations where the missing information was unsubstantiated or not pertinent to judgment, trustworthiness, or reliability. In addition to being substantiated by Applicant in a sworn statement, her delinquent debts were substantiated by the January 2001 CBR. Furthermore, Applicant's financial problems are always germane to her security suitability. The circumstances of this case also fall outside MC 2 because Applicant did not disclose the correct information about her financial problems until she provided her sworn statement in March 2001, and even though the falsification was isolated and occurred three years ago.

MC 3 of the personal conduct guideline is unavailable because Applicant took no affirmative action to reveal the delinquent debts until confronted by the investigator. In sum, Applicant's intentional falsification of question 38 of her security form in July 2000, has not been mitigated by Applicant's explanations. Applicant's payment of \$150.00 in June 2003 demonstrates credible evidence of partial payment of the department store debt. However, that payment has no relevance to Applicant's intentional falsification under the personal conduct guideline. In arriving at my finding for Applicant under the drug involvement guideline and against Applicant under the personal conduct guideline, I have considered the general factors of the whole person concept.

### **FORMAL FINDINGS**

Paragraph 1 (Drug Involvement): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.

Paragraph 2 (Personal Conduct): AGAINST THE APPLICANT.

- 2.a.i). Against the Applicant.
- 2.a.ii). Against the Applicant.
- 2.a.iii). Against the Applicant.
- 2.a.iv). Against 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 Applicant.

Paul J. Mason

Administrative Judge

1. The date of the answer appears next to the notary's signature. Below that date is the expiration date of the notary.

2. The interview/sworn statement occurred over a 16 day period between February 15, 2001 and March 1, 2001. On February 15, 2001, Applicant told the investigator she was not sure whether she would use marijuana in the future. On March 1, 2001, Applicant stated she would not use marijuana in the future.