

DATE: January 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05854

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty one year old Applicant has abused marijuana - including purchase, possession, and use, and in a December 2001 declaration she stated that she intends to continue to use marijuana in the future. Furthermore, the application of 10 U.S.C. § 986 disqualifies her from eligibility. Applicant's alcohol abuse has resulted in her reporting to her place of employment in an intoxicated state. Applicant continues to consume alcohol to the point of intoxication. Clearance is denied.

STATEMENT OF THE CASE

On February 19, 2003, 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) and Guideline G (Alcohol Consumption) 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 conduct proceedings and determine whether clearance should be granted or denied.

In a signed and sworn statement, dated March 14, 2003, Applicant responded to the SOR allegations. She requested that her case be decided on the written record in lieu of a hearing. On July 8, 2003, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response to the FORM. The case was assigned to me on September 4, 2003.

Department Counsel offered seven documentary exhibits (Exhibits 1-7). Applicant has offered no documentary evidence into the record.

FINDINGS OF FACT

The Government opposes Applicant's request for a security clearance, based upon the allegations set forth in the SOR. The SOR contains eight allegations, 1.a. through 1.h., under Guideline H (Drug Involvement) and one allegation, 2.a., under Guideline G (Alcohol Consumption).

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 51 years old. She is employed by a defense contractor, and she seeks to retain a DoD security clearance in connection with her employment in the defense sector.

Paragraph 1 (Guideline H - Drug Involvement)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she abuses illegal substances. Applicant first used marijuana in 1972 when she was 18 years old. During the period from 1971 to 1981 she used marijuana approximately 2 times a week. From 1981 until December 2001 she used marijuana approximately one time during every three to four week period. Applicant stated in the signed, sworn statement she made to a DSS agent in December 2001, "I never stopped using marijuana because I do not see that there is anything wrong with it." She also said, "I have intention of using marijuana in the future . . ." Based on these statements and the fact that Applicant gave no affirmative indication that she would not use marijuana in the future in her answer to the SOR, I conclude that she has continued using marijuana after her 2001 statement, and she will continue to use marijuana in the future (Exhibits 3 and 6).

Applicant purchased some of the marijuana that she used on three occasions from 1981 through 1996. Applicant also continued to use marijuana, even after she applied for a security clearance (Exhibit 6).

Applicant used LSD three times in the 1970's, which she recalls that she purchased from a friend. She also used cocaine, and while she furnished some conflicting information as to when she used it, the evidence shows that she first used it in the 1970's, and she last used it in approximately 1996 or 1997 (Exhibits 6).

Paragraph 2 (Guideline G - Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she abuses alcohol.

In April 2001, Applicant consumed approximately five glasses of rum and Coke over a four hour period each day. Thereafter, Applicant began to drink three rum and Coke drinks during her lunch period, and then she would report back to work in an intoxicated state, which affected her work in that she would not be able to think and function in a focused manner. Based on her sense that alcohol was causing her problems, Applicant attended Alcoholics Anonymous for a period of time in 2001. Applicant continues to consume one to four alcoholic beverages in a four hour period, approximately three times a week (Exhibit 6).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision.

Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. [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 H (Drug Involvement)

The Concern: 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.

Drugs are defined as mood and behavior altering substances, and include:

(E2.A8.1.1.2.1.) 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 (E2.A8.1.1.2.2.) inhalants and other similar substances.

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

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

(E2.A8.1.2.1.) any drug abuse (see above definition);

(E2.A8.1.2.2.) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

(E2.A8.1.2.5.) Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.

Conditions that could mitigate security concerns include:

(None)

On June 7, 2001, the Deputy Secretary of Defense issued a Memorandum, *Implementation of Restrictions on the Granting or Renewal of Security Clearances as Mandated by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001*. The memorandum provides policy guidance for the implementation of Section 1071 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which amended Title 10, United States Code, to add a new section (10 U.S.C. § 986) that precludes the initial granting or renewal of a security clearance by the Department of Defense under specific circumstances. The situation described above involves one of those specific circumstances.

Guideline G (Alcohol consumption)

The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

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

(E2.A7.1.2.2.) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;

(E2.A7.1.2.5.) Habitual of binge consumption of alcohol to the point of impaired judgment;

Condition that could mitigate security concerns include:

None

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

a. The nature, extent and seriousness of the conduct

- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be

a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegation set forth in the SOR:

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has used illegal drugs for many years under (Guideline H) and that she has used alcohol to excess (Guideline G). Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against her.

Paragraph 1 (Guideline H - Drug Involvement) With respect to Guideline H, the Government has established its case.

Applicant's improper and illegal drug abuse, including the purchase, possession, and use of marijuana, as well as the purchase and use of LSD and cocaine, is of concern, especially in light of her desire to have access to the nation's secrets. Applicant's overall conduct pertaining to her illegal substance abuse clearly falls within Drug Involvement Disqualifying Condition (DC) E2.A8.1.2.1. (any drug abuse), and DC E2.A8.1.2.2. (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution).

Applicant's stated intention to continue using marijuana in the future clearly falls within DC E2.A8.1.2.5. (Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination). I do not find that any Mitigating Condition (MC) applies to guideline H.

Finally, under the circumstances herein, Applicant's lengthy period of illegal substance abuse plus her indication as recently as December 2001 that she will continue to use marijuana brings her within the scope of provision 2 of 10 U.S.C. § 986 in that she is an unlawful user of a controlled substance. Accordingly, Paragraph 1 of the SOR are concluded against Applicant.

Paragraph 2 (Guideline G - Alcohol Consumption) Applicant's alcohol consumption has resulted in her reporting to her place of employment after consuming three rum and Coke drinks, which made her thinking unclear and unfocused. This falls within Disqualifying Condition (DC) E2.A7.1.2.2., alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition. Her consumption of approximately five glasses of rum and Coke over a four hour period each day for a considerable period comes within DC E2.A7.1.2.5., habitual of binge consumption of alcohol to the point of impaired judgment. I do not find that any MC applies to Guideline G.

Applicant continues to consume alcohol on a regular basis, consuming one to four alcoholic beverages in a four hour period, approximately three times a week. Applicant has a demonstrated history of drinking to excess, and she presents no credible evidence to support a conclusion she has reformed her habit. Paragraph 2 is concluded against Applicant.

On balance, it is concluded that Applicant has failed to overcome the Government's information opposing her request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the allegations expressed in Paragraphs 1 and 2 of the Government's SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: AGAINST THE APPLICANT.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Subparagraph 1.e.: Against the Applicant.

Subparagraph 1.f.: Against the Applicant.

Subparagraph 1.g.: Against the Applicant.

Subparagraph 1.h.: Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT.

Subparagraph 2.a.: 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 the Applicant.

Martin H. Mogul

Administrative Judge