

DATE: September 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05856

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1992 and 1999, the Applicant was arrested four times. All charges except for possession of marijuana charge were dismissed. Between 1985 and 1998, she used marijuana. Although listing all of her arrests, counseling, and treatment, she failed to indicate her drug usage on an October 2000 security questionnaire. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from the arrests, her prior marijuana usage, and her false answer on the questionnaire. Clearance is granted.

STATEMENT OF THE CASE

On January 23, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating DOHA could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ On February 20, 2003, the Applicant answered the SOR and requested a hearing. The case was assigned to me on March 27, 2003. A Notice of Hearing was issued on March 31, 2003, scheduling the hearing, which was held on April 28, 2003.

The Government's case consisted of nine exhibits (Gov Ex). The Applicant relied on her own testimony, the testimony of another witness, and one document. (App Ex) Following the hearing, additional documents were received, provisions having been made for their submission following the hearing. Department Counsel (DC) having no objection to their admission, the submissions were admitted as App Ex B. The transcript (Tr.) of the hearing was received on May 7, 2003.

FINDINGS OF FACT

The SOR alleges criminal conduct (Guideline J), excessive alcohol consumption (Guideline G), illegal drug usage (Guideline H), and personal conduct (Guideline E). The Applicant admits to the following: her January 1999 driving under the influence arrest; her October 1998 arrest and being charged with unlawful possession of a controlled

substance; her May 1997 arrest for possession of a controlled substance, which was dismissed; her October 1992 arrest for resisting arrest and obstruction of a peace officer; concurrently consumed alcohol once or twice a month; in October 2000 receiving drug and alcohol counseling; in 1999 attending and alcohol education awareness program; having smoked marijuana 6 to 12 times a year from 1990 to 1998; using amphetamines once in 1997; and being involved in two employment personnel incidents in March 2001. 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 34 years old, has worked for a defense contractor since October 2000, and is seeking a security clearance. The Applicant exhibits "infectious enthusiasm," has a cheerful attitude, exceptional, high quality, outstanding work, she takes initiative, has meticulous attention to detail, is very precise, very accurate, and demonstrate outstanding competence. (App Ex B) During 2000, due to her extremely high quality work the Applicant was an outstanding employee of the quarter. (Tr. 109) In 2001, she received a peak performance award. In February 2003, the Applicant received a merit salary increase. (App Ex A)

From 1985 to 1998, the Applicant used marijuana. She first used marijuana as a painkiller for cramping. (Tr. 37) She has since changed to a legal drug to cope with the pain. She continued to smoked marijuana because she enjoyed the effects. She used marijuana from 1985 to 1987, until her father was reassigned to new location area. In 1992 through 1998, the Applicant smoked with friends on an infrequent basis averaging 6 to 12 times per year. In 1998, the Applicant stopped using marijuana because: she was tired of the problems associated with usage; she wanted to change; and she started working on her college degree.

In November 1992, the Applicant--then age 23--was charged with resisting arrest and obstruction of the peace officer. (Gov Ex7) The Applicant was in a lounge playing pool when her brother got into a physical confrontation after a drink was spilled. She tried to get her brother out of the bar and was arrest after stepping on the foot of a police officer. She pleaded guilty to the charge of obstructing a police officer. The Applicant apologized for her actions and performed community service. The DA filed a motion to dismiss after all court requirements were completed.

In May 1997, the Applicant was arrested and charged with possession of a controlled substance. The Applicant had been in her boyfriend's house watching TV when the police executed a search warrant. Although marijuana was found, the charges against the Applicant were dismissed. (Gov Ex 6)

In 1997, the Applicant used methamphetamines on one occasion with her former boyfriend. The Applicant did not find this usage pleasurable--she vomited. The Applicant stated the usage was the biggest mistake of her life, (Tr.40, 50) and she will not use the drug in the future.

In October 1998, the Applicant was arrested. She was at her boyfriend's apartment in a room she shared with her boyfriend, when a search warrant was executed. A methamphetamine pipe was found under the pillow of the bed. Three other individuals were arrested with her, including her then boyfriend who was caught flushing methamphetamine down the toilet. Before her arrest, she was unaware her boyfriend had illegal drugs in the house. (Tr. 47) A "baggie" containing marijuana was discovered during the search of her car. Her boyfriend had used her car and left the marijuana in the car without her knowledge. The Applicant was charged with possession of a controlled substance with intent to distribution, unlawful possession of a controlled substance, and possession of one ounce or less of marijuana and drug paraphernalia. (Gov Ex 3, 5) Although she insists it was not her marijuana, it was her car, so she entered into the plea agreement. After pleading guilty to possession of one ounce or less of marijuana, a misdemeanor, the other charges were dismissed. The Applicant was ordered to undergo a court ordered drug evaluation, perform 48 hours of community service, fined \$750, and placed on 18 months unsupervised probation. The Applicant completed all terms and conditions set forth by the court.

The Applicant describes the two and one half years she was with her former boyfriend as a "miserable" time. (Tr.41) Following the May 1997 arrest, the Applicant had stopped seeing this individual, but they got back together when he told her he was no longer using illegal drugs. (Tr. 44) She last talked with him following the October 1989 drug bust. At the trial, she told him to stay away from her, not to have contact with her, and never see her again. (Tr. 50)

In January 1999, the Applicant was arrested for driving under the influence, driving while impaired, and a one-way

violation. The Applicant had two beers over a three-hour period while playing pool at a local bar. The Applicant was paying more attention to what she was saying than where she was driving. She was arrested when she turned the wrong way onto a one-way street. Although a blood test was taken, there is no indication of the Applicant's blood alcohol content (BAC). The Applicant insists she was not intoxicated. In March 1999 deferred sentencing was granted. (Gov Ex 4) As a condition of deferment, the Applicant was ordered to attend an alcohol education awareness program, fined \$218, ordered to perform 24 hours of community service, and placed on 12 months of unsupervised probation. The Applicant completed all terms and conditions set forth by the court. All charges related to this incident were dismissed. (Gov Ex 3)

In October 2000, the Applicant underwent a drug and alcohol evaluation. No formal diagnosis was made. (Gov Ex 8) Since the Applicant had not used alcohol or drugs in the previous six months, no treatment was recommended. This was part of the court-ordered alcohol education and awareness program she had to attend.

In October 2000, the Applicant completed a Security Clearance Application, SF86. The Applicant answered "no" to question 27, which asked if she had used any illegal drugs since age 16 or in the past seven years, whichever is shorter. She had listed her drug and alcohol-related arrests in response to questions 21 and 24. The Applicant thought she had already provided the information being requested in question 24 in her response to the prior questions. (Tr. 70) The Applicant acknowledges she "messed up" in answering this question. (Tr. 97) She also answered "yes" to question 30, which asked her if during the previous seven years her use of alcoholic beverages had resulted in the treatment or counseling and indicated treatment in 1999. This treatment was the court-ordered alcohol education and awareness program she attended. The drug and alcohol evaluation was not listed--it took place four days after the SF86 was completed.

In February 2001, the Applicant and a coworker had a "falling out" following the Applicant's employee of the quarter award. Following her award, tension between the two developed. In March 2001, the coworker told the Applicant she should not cough in front of a pregnant coworker. The Applicant became irritated and angry words were exchanged. The next day, the Applicant apologized to the coworker. The two had previously exchanged hostile words when the Applicant asked the coworker to download and print a document, which she refused to do. At which point, the Applicant got upset and made several inappropriate comments. (Gov Ex 9) The Applicant acknowledges her actions were inappropriate and she is very sorry for these incidents. She received an oral and written reprimand for her actions.

In September 2001, she married. She and her husband have purchased a new home. In October 2002, the Applicant's daughter was born. Her daughter is everything to her and for whom she wants to set a good example. She no longer sees her former boyfriend nor does she associate with individuals who used drugs. Between October 2002 and again the Applicant had one glass of wine, which occurred on Christmas Day 2000. She may use alcohol in the future on holidays.

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's 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:

Criminal Conduct, Guideline J. The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

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

- a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
- b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

- a. The criminal behavior was not recent.
- f. There is clear evidence of successful rehabilitation.

Alcohol Consumption, Guideline G. 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. E2.A7.1.1.

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

1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use. (E2.A7.1.2.1.)

Conditions that could mitigate security concerns include:

1. The alcohol related incidents do not indicate a pattern. (E2.A7.1.3.1.)
2. The problem occurred a number of years ago and there is no indication of a recent problem. (E2.A7.1.3.2.)
3. Positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

Drug Involvement, Guideline H. 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.

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

- a. Any drug abuse

Conditions that could mitigate security concerns include:

- a. The drug involvement was not recent.
- c. A demonstrated intent not to abuse any drugs in the future.

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.

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

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. (E2.A5.1.2.2.)

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. (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 J, Criminal Conduct. Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. The Applicant has been arrested four times between 1992 and 1999. DC a-(2) and b-(3) apply.

In 1999, the Applicant was arrested when she turned the wrong direction onto a one way street. She was paying more attention to what she was saying and not to where she was driving. Before her arrest she had been playing pool and had been drinking beer. The Applicant received a deferred sentence, following which all charges related to this incident were dismissed. The record is insufficient to establish the Applicant pleaded guilty to Driving Under the Influence or was intoxicated. The behavior is not recent. Mitigating Condition (MC) a-(4) applies. Since the 1999 conduct, the Applicant has changed her life. She is older, has married, purchased a home, and has a daughter who is everything to her and for whom she wants to set a good example. In the six months before the hearing, the Applicant had consumed alcohol only once, when she had a glass of wine at Christmas. MC f-(5) applies. I find for the Applicant as to SOR subparagraph 1.a.

In 1998, she was arrested along with three others at her former boyfriend's home. The Applicant did not know there were drugs present. Her boyfriend had assured her he was no longer involved with illegal drugs following a previous arrest. The Applicant pleaded guilty to marijuana possession when a baggie was found in her car. Although she insists it was not her marijuana, it was her car and so she entered into the plea agreement. The Applicant characterizes the two and a half years she was with her former boyfriend as a miserable time. The last time she saw him was in court when

she told him to stay away from her, not to have contact with her, and never see her again. She no longer associates with individuals who use illegal drugs. MC a. and f. apply. I find for the Applicant as to SOR subparagraph 1.b.

In 1997, the Applicant was at her former boyfriend's home watching TV when the police executed a search warrant. Although marijuana was found, all charges against the Applicant were dropped. She did not know illegal drugs were present. She no longer associates with this individual or any individuals who use illegal drugs. MC a. and f. apply. I find for the Applicant as to SOR subparagraph 1.c.

In 1992, the Applicant's brother got into an altercation over a spilled drink in a bar. The Applicant tried to intervene and, in so doing, stepped on a police officer's foot. She pleaded guilty to obstructing a peace officer. The Applicant apologized to the officer for her actions, completed community service, and all requirements of the court, prior to a motion to dismissed being filed by the DA. This conduct occurred more than ten years ago. MC a. and f. apply. I find for the Applicant as to SOR subparagraph 1.d.

The Government has satisfied its initial burden of proof under Alcohol Consumption Guideline G. The Applicant was involved in a single alcohol related arrest, which was an alcohol related incident away from work. In January 1999, she was arrested for going the wrong way on a one way street. Prior her arrest, she had two beers. After pleading guilty to driving under the influence she received a deferred sentence for 12 months. Disqualifying condition 1 [\(6\)](#) applies.

Her single alcohol related arrest occurred more than four years ago and there is no evidence of a recent problem. Since October 2002, the Applicant has had one glass of wine on Christmas 2002. I do not find the Applicant's drinking, without proof of intoxication or abuse of alcohol, to constitute a recent problem. Mitigating factor 2 [\(7\)](#) applies. Additionally, since the 1999 incident she has made favorable changes in her life. These changes coupled with her reduction in drinking are sufficient for MC 3 [\(8\)](#) to apply. I find for the Applicant as to SOR subparagraphs 2.a. and 2.d.

The Applicant attended an alcohol education awareness program and, in October 2000, underwent a drug and alcohol evaluation. No formal diagnosis was made and because the Applicant had not used alcohol or drugs during the previous six months, no treatment was recommended. I will not find against the Applicant simply because she attended an alcohol education awareness program or underwent an evaluation. I find for the Applicant as to SOR subparagraphs 2. b. and 2.c.

The Government has satisfied its initial burden of proof with regard to its security concerns over Applicant's drug involvement, Guideline H. The Applicant used marijuana between 1985 and 1998, and used methamphetamine one time in 1997. DC 1 [\(9\)](#) applies.

In determining the security concern of her marijuana use, her five-year period of abstinence must be balance against her occasional use over 13 years of use to which the disqualifying and mitigating conditions are applied. In reviewing this drug usage, it is important to consider the Applicant's motivation for stopping. She stopped because she is older, has married, and has a daughter for whom she wants to set a good example. She does not intend to use illegal drugs in the future. She realizes the negative impact drug usage can have on one's life and realizes usage is inappropriate. She no longer associates with individuals who use illegal drugs, and illegal drugs are no longer part of her social environment. She admits her 1997 single use of methamphetamine was the biggest mistake of her life.

Mitigating Condition (MC) 1 [\(10\)](#) applies, because the most recent usage occurred more than five years ago. Her intent not to use illegal drugs in the future, coupled with her candor about her drug use, is sufficient for me to find MC 3 [\(11\)](#) applicable. Accordingly, I find for the Applicant as to SOR subparagraphs 3.a., 3.b., 3.c., 3.d. and 3.e. Guideline H (Drug Involvement) is resolved in favor of the Applicant.

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 October 2000, the Applicant completed an SF 86 in which she answered "no" when asked about her use of illegal drugs since age 16 or in the last seven years. Because of this false answer, Disqualifying Condition (DC) 2 [\(12\)](#) applies.

The Applicant indicates her answers to the prior questions had already addressed her drug usage. When the Applicant completed her SF 86, she listed her drug related arrests in response to questions 22 and 24, but answered "no" to question 27, which clearly called for a "yes" answer. However, this was a false answer to a single question on a single form that was completed two and one half years previous. The Applicant has provided information concerning her illegal drug usage. MC 2-(13) applies. Having had an ample opportunity to evaluate the Applicant's demeanor, manners, and deportment, and noting the positive changes in her lifestyle, I find for the Applicant as to SOR subparagraph 4.a.

The Applicant did not falsify her SF 86 in her answer to question 30. In response to that question she listed her treatment related to the 1999 alcohol education awareness program. Her answer does not reflect her drug and alcohol evaluation that occurred four days after she completed the form. Because the evaluation occurred after the form was completed there was no falsification. Additionally, an evaluation is not treatment or counseling and therefore does not have to be revealed in response to question 30 for that question specifically asks about treatment or counseling. I find for the Applicant as to SOR subparagraph 4.b.

Following the Applicant's award as employee of the quarter tensions developed between her and a prior friend. The tension resulted in two incidents where angry words were exchanged. The Applicant apologized to her coworker. Although serious enough for her to have received an oral and written reprimand for her actions, the incidents appear to be a personality conflict between the individuals involved. I do not find this to be of security significance. I find for the Applicant as to SOR subparagraph 4.c.

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 Criminal Conduct, Guideline J: 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

Paragraph 2 Alcohol Consumption, Guideline G: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Paragraph 3 Drug Involvement, Guideline H: FOR THE APPLICANT

Subparagraph 3.a.: For the Applicant

Subparagraph 3.b.: For the Applicant

Subparagraph 3.c.: For the Applicant

Subparagraph 3.d.: For the Applicant

Subparagraph 3.e.: For the Applicant

Paragraph 4 Personal Conduct, Guideline E: FOR THE APPLICANT

Subparagraph 4.a.: For the Applicant

Subparagraph 4.b.: For the Applicant

Subparagraph 4.c.: 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 the Applicant. Clearance granted.

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. DC a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
3. DC b. A single serious crime or multiple lesser offenses.
4. MC a. The criminal behavior was not recent.
5. MC f. There is clear evidence of successful rehabilitation.
6. DC 1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use. (E2.A7.1.2.1.)
7. MC 2. The problem occurred a number of years ago and there is no indication of a recent problem. (E2.A7.1.3.2.)
8. MC 3. Positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)
9. DC1. Any drug abuse. (E2.A8.1.2.1.)
10. MC1. The drug involvement was not recent. (E2.A8.1.3.1.)
11. MC 3. A demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.)
12. 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. (E2.A5.1.2.2.)
13. MC 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. (E2.A5.1.3.2.)