DATE: October 17, 2003

In Re:

SSN: ----------

Applicant for Security Clearance

CR Case No. 02-29558

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of criminal convictions from 1978 to 1995, including 1990 felony offenses of perjury and possession of cocaine with intent to sell. Whereas she was sentenced to terms of incarceration of two years for perjury and ten years for the drug offense, Applicant is ineligible for a security clearance under 10 U.S.C. § 986. Significant personal conduct and criminal conduct concerns also exist because of her failure to be completely frank about her criminal record and financial delinquencies on her April 2002 security clearance application and about her involvement in larceny from her employer in 1995 when interviewed by the Defense Security Service (DSS). Clearance is denied.

STATEMENT OF CASE

On December 27, 2002, the Defense Office of Hearings and Appeals (DOHA) 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 the Applicant.(1) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on criminal conduct (Guideline J) and personal conduct (Guideline E).

On January 28, 2003, Applicant filed a complete answer to the SOR allegations and requested a hearing before a DOHA Administrative Judge.(2) The case was assigned to me on May 6, 2003, and a formal notice was issued on May 12, 2003, scheduling the hearing for June 5, 2003. At the hearing held as scheduled, nine Government exhibits and eight Applicant exhibits were entered into the record. Applicant and the pastor of her church testified on Applicant's behalf. A transcript of the hearing was received by DOHA on June 13, 2003.

The record was held open until June 19, 2003, for Applicant to submit bankruptcy records and additional character reference letters. On June 12, 2003, Applicant timely forwarded through Department Counsel a letter from the organization which assisted Applicant in filing her bankruptcy petition along with the court records of a Chapter 7

bankruptcy filed September 2002 (Ex. I) and three additional character references (Exs. J, K, L). Department Counsel having no objection to their admission, the documents were marked accordingly and entered into the record.

FINDINGS OF FACT

DOHA alleged in the SOR criminal conduct concerns because of a history of criminal activity from 1978 to 2002, including felony convictions for perjury and possession of cocaine with intent to sell in 1990. The felony offenses, for which Applicant was sentenced to terms of imprisonment in excess of one year, were alleged to disqualify her from having a security clearance granted or renewed under 10 U.S.C. § 986.[(3)]

Personal conduct and criminal conduct concerns were also alleged related to Applicant's failure to be completely candid about her criminal record and her financial delinquencies when she completed her SF 86 in April 2002, and her misrepresentations during DSS interviews, especially concerning her August 1995 larceny from her employer. Applicant admitted with explanation her arrest record and omission from her SF 86 of relevant and material facts concerning her criminal history with the exception of a January 2002 breach of peace. She denied deliberate omission of the financial judgments and delinquencies from her SF 86 as well as any intentional misrepresentation of her criminal history in her sworn statements provided to the DSS agent. Applicant's admissions are accepted and incorporated as findings of fact. After a thorough review of the evidence, and on due consideration of the same, I make the following additional findings of fact:

Applicant is a 41-year-old divorced mother of two grown children (ages 19 and 22) and grandmother of a two-year-old. She is the primary source of financial support for her grandson who lives with her, although she receives public assistance for him at $333.00 per month as of June 2003. Applicant worked for a defense contractor as a painter/cleaner from early May 2002 until she was laid off in about late March 2003 because of her lack of a secret security clearance.

Applicant has several criminal convictions in her past, ranging from minor trespassing and disorderly conduct offenses to serious felony perjury and drug possession with intent to sell. When she was still in her teens, Applicant was arrested on several occasions for offenses related to fighting or verbal threats: August 1978 for threatening (no disposition of record); September 1978 for breach of peace (30 days jail, suspended, and one year probation); December 1978 disorderly conduct (30 days jail, suspended, and one year probation) and loitering on school grounds (nolle prossed); March 1979 for theft of services/larceny but fined $25.00 on substituted charge of disorderly conduct; May 1980 disorderly conduct (30 days jail, suspended, unconditional discharge after six months).

In June 1981, when Applicant was 19-years-old, she gave birth to a daughter. That September, Applicant was arrested for assault on police, resisting arrest, and assault 2nd degree for her role in a fight at a picnic at the local ballfield. The fight started when an intoxicated man pushed her brother when the latter had Applicant's infant daughter in his arms. Applicant got involved in the physical altercation after she was hit with a baseball bat in the legs, but she denies assaulting the officer. Convicted of resisting arrest and assault 2nd degree, she was sentenced for resisting arrest to one year in jail, suspended, and one year probation, and for assault to 90 days, suspended, $165.00 fine and one year probation. The assault on police charge was nolle prossed.

In August 1984, Applicant gave birth to a son. There is no record of any adverse legal involvement until March 1989, when Applicant was arrested for interfering with a police officer and resisting arrest. Applicant claims she was wrongly charged; that she had attempted to stop some unknown persons from beating her brother and was handcuffed when all she had done was repeatedly ask the police what was going on. Applicant submits she accepted the advice of her court-appointed lawyer to "accept the charges." She was found guilty, fined $185.00, and awarded probation.

In February 1990, Applicant was arrested on a warrant and charged with perjury, a class D felony. When in court to answer for a prior offense, Applicant denied she had ever been awarded accelerated rehabilitation when she had benefitted from the program as a juvenile. Applicant claims to have made an "honest mistake," but she was found guilty, and sentenced to two years in prison, suspended after 30 days served, and three years probation.

In September 1990, after drinking too much, Applicant got into a fight with her then boyfriend at a local bar. Barred from the premises, Applicant was arrested when she returned to the bar the following weekend and charged with

criminal trespass. She was found guilty and fined $50.00.

Already a heavy drinker of beer, Applicant started using cocaine in Fall 1990. By December 1990, she was using five to seven $10.00 bags of cocaine per day. In mid-December 1990, the police raided her home and found 18 bags containing small amounts of cocaine.[(4)]

Applicant maintains the drug, which she bought for $180.00 with welfare funds, was for personal consumption, but she was charged with felony possession of cocaine with intent to sell, and use of drug paraphernalia. Applicant was convicted of the felony and sentenced to 10 years incarceration to be suspended after three years served, and to three years probation. She also lost custody of her two children. Applicant served 45 days in a state correctional facility in July/August 1991 and was released to home confinement for the remainder of the three years with mandatory completion of a drug and alcohol program. Applicant attended the addiction services program from mid-December 1991 to late July 1992, and went to two Narcotics Anonymous (NA)/Alcoholics Anonymous (AA) meetings per day for six months thereafter. No longer using drugs or abusing alcohol, Applicant regained custody of her children in about September 1992.

While Applicant was on probation for the felony cocaine possession, she was stopped by the police. Operating on a friend's license because she lacked a valid operator's permit, Applicant panicked and gave a false surname to the officer. [(5)]

Convicted of criminal impersonation, she was ordered to perform community service in lieu of paying a fine.

Applicant was charged with criminal trespass in July 1995 after she went to a club she had been barred from entering. She performed 25 hours of community service in lieu of paying a fine.

In 1995, Applicant was employed as a sales clerk/cashier for a department store. When Applicant was on duty one day in August 1995, she attempted to shoplift merchandise from her employer through her 14-year-old daughter. A security official observed Applicant's daughter approach the register where Applicant exchanged two pairs of jeans valued at $29.98 each for two packages of boxers of comparable value ($30.00 each). After the items were exchanged, Applicant placed an extra pair of boxers and some socks in her daughter's bag without her or her daughter paying for them. Applicant was fired from her employment and charged criminally with larceny, 6th degree, and felony impairing the morals of a minor (risk of injury to a minor). Applicant was convicted of larceny and fined $250.00. The impairing morals charge was nolle prossed.

Employed part-time as a games dealer at a local casino from 1996 to 1998, Applicant fell behind in her financial obligations. Four financial judgments ($356.97 and $989.71 in personal loan defaults, $470.00 for car service, and $650.00 in hospital debt) were awarded against her between October 1996 and January 1998. At least four other accounts fell delinquent by January 1999: a $1,172.00 charge off credit card balance; a $2,151.30 retail charge card debt; $308.00 in unpaid mobile telephone charges; and a $975.00 for an in-home training course that Applicant did not complete. As of April 2002, these debts were still outstanding.

An active member since the mid 1990s of the church she had been raised in, Applicant in August 1998 married a church member who had outwardly exhibited the attitude and character of a devout person, but who turned out to have a serious alcohol and drug problem. Applicant had the pastor of their church come over to the home on numerous occasions for assistance in dealing with her intoxicated or drug-impaired spouse. In early January 2002, Applicant confronted her spouse outside of their home about his drinking. He pushed her away and she fell to the pavement, scraping her cheek. She contacted the police and he was arrested for assault, 3rd degree. She was given a summons to appear on a charge of breach of peace, which she did not consider to be an arrest.

Focused on gaining employment skills, Applicant did not return to her drinking and drugging past. In June 2000, she completed a pre-vocational skills training course. Circa December 2000, she applied to the state board of pardons to have her criminal record expunged, only to be told her application was premature. In late 2001, she completed a state job training initiative pilot program while working as a laboratory technician for an eye wear company (company X).

In February 2002, she left the employ of company X under unfavorable circumstances.[(6)] In conjunction with her application for work as a painter with the local defense contractor, Applicant on April 23, 2002, executed a security clearance application (SF 86). Applicant was not completely candid about her employment record, police record, or financial record. She deliberately concealed her firing from her retail employer in 1995 for larceny.[(7)] While she reported her possession of cocaine with intent to sell in response to question 21 (any felony charges or convictions), she did not list her perjury offense, which she knew was a felony (*see* Transcript p. 118). She also deliberately omitted from her SF 86 her arrests in July 1995 for criminal trespass and in August 1995 for impairing the morals of a minor and larceny. Assuming Applicant failed to understand the impairing morals charge was a felony, she clearly knew she had been charged with the offense within the last 7 years so was required to be reported in response to question 26 (arrests or convictions in the last 7 years). As for her failure to report her January 2002 breach of peace as a pending charge (question 21), Applicant was unaware of any criminal charge pending against her. There is sufficient evidence to find Applicant was primarily a victim of spousal assault on that occasion and that she received a summons for her involvement rather than being placed under arrest. With four unsatisfied financial judgments against her and four other delinquent debts charged off or placed for collection, Applicant responded negatively to inquiries into her financial record (37. Unpaid judgments in last 7 years, 38. Financial delinquencies over 180 days in last 7 years, and 39. Currently over 90 days delinquent). Applicant knew of the debts and acknowledged collection efforts on behalf of at least one of the creditors in 1996. Her denial of any intentional omission based on belief the accounts were over seven years old is rejected as not credible.

During the course of its investigation into Applicant's background, the DSS ran a credit check on April 29, 2002, which disclosed the four outstanding financial judgments, two open consumer credit accounts rated as bad debts, and two other accounts in collection. Applicant was current on several other accounts, and had taken out an automobile loan in March 2002 for $12,202.00.

On May 8, 2002, Applicant was interviewed by a DSS agent about her credit report and failure to list her outstanding debts on her SF 86. Applicant acknowledged the debts, indicating the balances owed on two of the judgment debts had been reduced, from $989.00 to $98.00 and $470.00 to $200.00, and disputed her legal liability with regard to the judgment awarded the local hospital as she was receiving public assistance for her children at the time the services were rendered to them. With her monthly expenses exceeding her net income, she admitted an inability to pay her debts, but expressed an intent to eventually contact her creditors. Applicant was questioned about her listed felony drug offense, and she denied any use of illegal drugs since before August 1991. Applicant also denied any criminal involvement in the last 7 years.

After the initial interview, DSS criminal record checks revealed criminal activity unlisted on her SF 86. On July 3, 2002, Applicant was interviewed about this criminal past and failure to reveal several offenses on her SF 86 and during her prior interview. Applicant was not completely candid about her criminal involvement in the 1995 larceny, telling the DSS that all she did was give a customer a few dollars from her wallet to help pay for her total bill. Store cameras recorded the transaction, which was found to be suspicious. She explained the 1990 perjury charge stemmed from her denial of ever having been awarded accelerated rehabilitation, when she had participated in the program as a juvenile. As for the 1992 criminal impersonation, Applicant admitted she might have used her birth name (which she uses on her cable account) when stopped for driving without a license. She did not list the name on her SF 86 because she doesn't use it. Applicant denied any intentional omission of her criminal record from her SF 86, as she thought all were over 7 years old.

On July 24, 2002, Applicant provided a handwritten statement to the DSS agent in which she discussed in detail her criminal offenses. She swore to the truth of, and signed this statement in which she admitted having given the police a false name in 1992 ("I told the officer I was someone else instead of myself because I was scared I did not have any license."), but she misrepresented her role in the 1995 larceny from her employer, again claiming she had given a customer a few dollars when the woman cashed out and the woman had a receipt for all items purchased.

On August 6, 2002, Applicant was interviewed to resolve the discrepancy in her account of the larceny offense from that of the police record. Initially, Applicant reiterated she had given a woman a few dollars to pay her bill and that she had no idea of any endangering a minor charges. Then confronted with the police report of the incident, Applicant claimed she then "remembered that [she] was arrested and fired because of an incident involving [her] daughter as described in

the police report." She maintained she got "mixed-up" with another incident where she did give a woman a few dollars.

With her spouse out of the house pending their divorce effective November 2002, Applicant lacked the funds to make any payments on her debts. In mid-September 2002, she filed for Chapter 7 bankruptcy and was granted a discharge of her debts (including those judgment and collection accounts listed on her credit report) in late December 2002.

In conjunction with her intended reapplication to the state board of pardons for expungement of her record, Applicant obtained sometime after April 2002 a copy of her police record. Apprized thereby of the January 2002 breach of peace charge, Applicant had the charge against her dismissed in early January 2003. She has not yet filed with the board of pardons, but she is supported in her efforts by her church pastor and friends based on her rehabilitation from her criminal conduct.

As of June 2003, Applicant was supporting herself and her grandson on unemployment compensation of $298.00 weekly and public assistance of $333.00 monthly. Active in her church, Applicant cleans the building, helps with the children on Sundays, and sings in the choir. She has no intent to use illegal drugs in the future as she wants to set a good example for her grandson.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Sections 6.3 and E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors 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 judgment, irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, the following adjudicative guidelines are most relevant to this case:

GUIDELINE J

Criminal Conduct

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.

c. Conviction in a Federal or State court, including a court-marital of a crime and sentenced to imprisonment for a term exceeding one year.[(8)]

Conditions that could mitigate security concerns include:

g. Potentially disqualifying conditions c. and d., above, may not be mitigated unless, where meritorious circumstances exist, the Secretary of Defense or the Secretary of the Military Department concerned has granted a waiver.

GUIDELINE E

Personal Conduct

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:

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.)

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.)

A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency (E2.A5.1.2.5.)

* * *

Under Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which 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. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the SOR. If the Government meets its burden and establishes conduct cognizable as a security concern 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 criterion conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Directive, Enclosure 2, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines J and E:

Applicant has a record of criminal conduct from 1978 to July 2002. While she has no convictions since her August 1995 larceny from her employer, Applicant committed repeated felonious conduct when she omitted from her SF 86 and misrepresented during subject interviews with the DSS relevant and material information regarding her employment history, police record, and/or financial delinquencies.[(9)] Under Guideline J, the fact that Applicant has never been formally charged with violating 18 U.S.C. § 1001 does not preclude its consideration for security purposes, as any criminal conduct is potentially security disqualifying. A history or pattern of criminal activity, especially as extensive as the Applicant's, raises serious doubts for an individual's judgment, reliability, and trustworthiness. Consideration is clearly warranted of disqualifying conditions a. (allegations of criminal conduct) and b. (a single serious crime or multiple lesser offenses) under the criminal conduct guideline. Furthermore, since Applicant was sentenced to terms of incarceration of two years (suspended after 30 days served) for perjury and ten years (suspended after 3 years) for felony cocaine possession with intent to sell, disqualifying condition c. (conviction in a Federal or State court, including a court martial, of a crime and sentenced to imprisonment for a term exceeding one year) also applies. By virtue of these sentences, Applicant cannot be granted a security clearance unless meritorious circumstances exist, as determined by the Secretary of Defense.

Applicant submits she is rehabilitated from her criminal past, citing her lack of similar criminal activity since 1995 and her stable lifestyle. Applicant appears to have benefitted significantly from the court-ordered drug and alcohol treatment she was required to attend following her release from incarceration in 1991, as there is no evidence of abusive drinking or of any involvement with illicit drugs since at least August 1991. As confirmed by the testimony of her pastor, who has known her for many years and counseled her during her incarceration, Applicant does not allow either alcohol or drugs in her house. She has completed various training programs in the last few years, gaining valuable employment skills, and demonstrated reliability in her activities within her church. Also to her credit, she assumed responsibility for raising her two-year-old grandson when her daughter chose to be "a partier."

While Applicant has put forth a credible effort to change her lifestyle, her recent misrepresentations to the Government concerning her employment, criminal, and financial records cause serious doubts about her reform of her criminal conduct. Successful rehabilitation depends in large part on an acceptance of responsibility for past wrongdoing with genuine expression of remorse along with a track record of compliance with the law. Having been advised that a knowing and willful false statement on her SF 86 could be punished by fine or imprisonment under 18 U.S.C. § 1001, Applicant did not disclose her termination from her retail employment for larceny, her financial delinquencies (including judgments) that she knew had not been satisfied, or several arrests, including for larceny and perjury. SOR subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.o. and 1.p., which have been proven by the Government remain unmitigated and are resolved against her. Subparagraph 1.n. is found in her favor as she was the victim of a spousal assault on that occasion.

Applicant's failure to be fully frank with the Government at all times, including at the hearing when she provided spurious excuses for her deliberate misrepresentations (such as she was mixed up about the circumstances which led to her job termination in 1995), raises independent security concerns under Guideline E, personal conduct (*see* DCs E2.A5.1.2.2, E2.A5.1.2.3., and E2.A5.1.2.5.). Applicant did not deny her delinquent debts or her arrest record when questioned by the DSS agent, and she provided details about the offenses. Yet it took a third subject interview for Applicant to admit to the circumstances that led to her termination from her retail job in 1995. For mitigation under the Directive, efforts at rectification must be made before confrontation. The evidence reflects Applicant admitted her involvement in the larceny through her daughter of merchandise from her employer only after she was presented with the police officer's account. While I can appreciate Applicant's desire for a fresh start, the Government must be able to rely at all times on the representations of those individuals entrusted with the Nation's secrets. At this juncture, I am unable to conclude with a sufficient degree of confidence that Applicant can be counted on to fulfill the fiduciary obligations attendant with a security clearance. Subparagraphs 2.a., 2.b. (as to the 1990 perjury offense), 2.d. (as to the 1995 criminal trespass and larceny), 2.e., 2.f., 2.h., and 2.i. are resolved against her, Applicant having failed to overcome the personal conduct concerns caused by these deliberate falsifications. Subparagraphs 2.c. and 2.g. are concluded in Applicant's favor, as the Government did not prove deliberate omission or concealment of the January 2002 breach of peace. In light of the concerns that persist for her criminal conduct and personal conduct, it would be premature to make a recommendation on the issue of whether circumstances merit further consideration of her case for a waiver of 10 U.S.C. § 986.

FORMAL FINDINGS

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

Paragraph 1.Guideline J: 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

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: For the Applicant

Subparagraph 1.o.: Against the Applicant

Subparagraph 1.p.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Subparagraph 2.g.: For the Applicant

Subparagraph 2.h.: Against the Applicant

Subparagraph 2.i.: 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.

Elizabeth M. Matchinski

Administrative Judge

1. DOHA issued the SOR under Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4). The SOR was issued to Applicant under her married name. Following her divorce in November 2002, Applicant assumed her maiden name. The decision is issued under her maiden name with her former surname indicated in parentheses.

2. Applicant submitted an initial response signed January 6, 2003, in which he failed to respond to some of the allegations and to indicate whether she wanted a hearing or a decision on the written record.

3. Section 986 states in pertinent part:

§986. Security clearances: limitations

(a) Prohibition.--After the date of the enactment of this section, the Department of Defense may not grant or renew a security clearance for a person to whom this section applies who is described in subsection (c).

(b) Covered Persons.--This section applies to the following persons:

(1) An officer or employee of the Department of Defense

(2) A member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status.

(3) An officer or employee of a contractor of the Department of Defense.

(c) Persons Disqualified From Being Granted Security Clearances.--A person is described in this subsection if any of the following applies to that person;

(1) The person has been convicted in any court of the United States of a crime and sentenced to imprisonment for a term exceeding one year. . .

(d) Waiver Authority--In a meritorious case, the Secretary of Defense or the Secretary of the military department concerned may authorize an exception to the prohibition in subsection (a) for a person described in paragraph (1) or (4) of subsection (c). The authority under the preceding sentence may not be delegated.

4. Applicant provided inconsistent accounts as to how much cocaine was found in her residence. She told the DSS agent on July 3, 2002, she was charged with possession of four bags worth $15.00 each of cocaine. (Ex. 3). In a more detailed statement of July 24, 2002, Applicant indicated she had "7 bags to be exact." (Ex. 4). At her hearing, she testified to the police finding 18 bags. (Transcript p. 174).

5. Applicant submits the surname given to the police (which is other than her claimed maiden name)was her name as recorded on her birth certificate. Nowhere on her SF 86 did Applicant indicate she was ever known by this surname. On July 3, 2002, she told the DSS agent her cable account was under this name. (Ex. 3). On July 24, 2002, she admitted to the agent she told the officer when she was stopped that she was someone else as she was scared and did not have her license. (Ex. 4). At her hearing, she related the name was on her cable account, but she did not consider it criminal impersonation because it was her birth name. She later testified she could have said that surname when stopped without a license but he does not think she did. (Transcript pp. 108-11).

6. The only information of record about the termination is in the SF 86 where Applicant indicated she left the job under unfavorable circumstances: "SUBJECT LEFT EMPLOYMENT AT [Company X] TO GO TO SCHOOL. HER EMPLOYER WAS NOT HAPPY ABOUT IT." (Ex. 1).

7. Applicant testified she did not list her involuntary termination in 1995 because "it just slipped [her] mind." (Transcript p. 114). Her testimony is just not credible, particularly where she was not candid during her DSS interviews about her role in the larceny.

8. Under 10 U.S.C. 986 (P.L. 106-398) a person who has been convicted in Federal or State court, including courts marital, and sentenced to imprisonment for a term exceeding one year, may not be granted or have renewed access to classified information. In a meritorious case, the Secretary of Defense or the Secretary of the Military Department concerned, may authorize a waiver of this prohibition.

9. Section 1001 of the United States Code provides in pertinent part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-

(1) falsifies, conceals, or covers up by any trick scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title or imprisoned not more than 5 years, or both.