

DATE: October 28, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31614

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 21-year-old security guard for a defense contractor. She has had problems with alcohol abuse and marijuana use including time in a detoxification unit and was referred to a center for further treatment she did not attend. She has had debt problems as a result of hospitalization and has filed bankruptcy. Clearance is denied.

STATEMENT OF CASE

On April 30, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, 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 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated June 2, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on July 16, 2003. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She did not do so. The case was assigned to, and received by, this Administrative Judge on September 16 2003.

FINDINGS OF FACT

Applicant admitted to all of the specific allegations in the SOR but stated some qualifications and mitigating facts. The admitted facts are hereby incorporated as findings of fact.

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant is a 21-year-old security guard for a defense contractor. She had problems with alcohol abuse two years ago and was hospitalized. She then spent five days in a detoxification unit and was referred to a rehabilitation center for further treatment but did not attend. She has financial problems as a result of the stay in the detoxification unit that cost over \$11,000.00 and has filed bankruptcy.

Applicant used marijuana beginning in 1998 and extensively in the summer of 2000 to the extent that she cannot state the number of times she used the drug.

Applicant was arrested three years ago in another state and charged with "Menacing/Possession of Weapon". She spent one night in jail and has had no criminal record since that time.

Applicant was fired from her job at a chain fast food restaurant two years ago after an argument with a manager with whom she had continuing problems.

POLICIES

[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

Under the Directive the Government has alleged a number of Disqualifying Conditions (DC). The first relates to alcohol abuse. These concern alcohol related incidents away from work (E2.A7.1.2.1.), and consumption of alcohol to the point of impaired judgment (E2.A7.1.2.5.) under Guideline G. Possible mitigating factors include the fact that the problem occurred a number of years ago and there is no current problem. (E2.A7.1.3.2.) Also that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

The second allegation concerns drug involvement (E2.A8.1.2.1.) Under Guidelin H relating to any drug use. The drug use was three years ago. A possible mitigating condition is that the drug use was not recent. (E2.A8.1.3.1.)

The third allegation concerns financial considerations (E2.A6.1.2.3.) A possible mitigating condition is that the person is making a good faith effort to resolve the debt. (E2.A6.1.3.6.)

The fourth allegation concerns criminal offenses (E2.A10.1.2.2.) under Guideline J relating to a single serious crime. A mitigating condition (MC) is that the offense was not recent. (E2.A10.1.3.1.)

The fifth allegation concerns personal conduct (E2.A5.1.2.1.) under Guideline E relating to information from employers. A possible mitigating factor is that the information was not pertinent to a determination of judgment, trustworthiness or reliability.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Alcohol Consumption Disqualifying Condition (DC) 1 under Guideline G of the Directive raises the issue of alcohol related incidents away from work such as driving while under the influence or other criminal incidents related to alcohol use. The record of Applicant's alcohol abuse and hospitalization clearly show that the Government has established reasons to deny her a security clearance under Guideline G. The facts admitted to by the Applicant and found herein clearly meet the tests of the Disqualifying Conditions alleged in that her excessive drinking led to impaired judgment and subsequent hospitalization followed by five days in a detoxification center.

No mitigating factors are applicable under the cited guideline. The conduct was within the last three years. The failure to enter the follow up rehabilitation program to which she was referred shows a pattern of disregard of her best interests in solving her problem. She continues to drink beer although she asserts that it is only infrequently and at most once a month.

Applicant has failed to establish that she has been rehabilitated from alcohol abuse. I cannot conclude that Applicant has demonstrated sufficient changes in behavior of sobriety to justify a finding in her favor.(MC 3)

The government has cited Drug Involvement Disqualifying Condition (DC) 1 under Guideline H in the SOR as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. E2.A8.1.1.3 provides the following definition: "Drug abuse is the illegal use of a drug" Mitigating Condition (MC) 2 might apply if there is "[a] demonstrated intent not to abuse any drugs in the future." Although Applicant asserts in her answer that she does not now use drugs that is insufficient in the light of the extent of her past use three years ago.

Financial Considerations Disqualifying Conditions (DC) under Guideline F includes an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations or an inability or unwillingness to satisfy his debts. DC 1, DC 3. Applicant incurred over \$11,000.00 in debt as a result of her alcohol related hospitalization. She could not pay it and this is the only debt issue alleged. She could not pay the bill and has filed bankruptcy. Although she offered no evidence that it had been discharged, she has at least taken steps to resolve the debt.

A history or pattern of criminal activity creates doubt about a person's judgment, trustworthiness, and reliability under Criminal Conduct (DC)1 under Guideline J. The evidence shows one single serious offense when she was 17 years of age. Mitigating Conditions are applicable in that the behavior is not recent (MC 1) and there is evidence of successful rehabilitation. (MC 5)

Information from a former employer may lead to concerns about judgment, trustworthiness, and reliability under Personal Conduct Guideline E. The fact that she was fired for a dispute with a manager of a fast food restaurant when she was 19 is not pertinent to a determination of judgment, trustworthiness or reliability.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1 Guideline G AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2 Guideline H: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline F FOR APPLICANT

Subparagraph 3.a.: For Applicant

Paragraph.4.Guideline J: FOR APPLICANT

Subparagraph 4.a.: For Applicant

Paragraph 5 Guideline E FOR APPLICANT

Subparagraph 5.a.: For Applicant

DECISION

After full consideration of all the facts and documents 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. Clearance is denied.

Charles D. Ablard

Administrative Judge