

DATE: November 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-12202

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Robert W. Hendrick, Esquire

SYNOPSIS

Applicant failed to mitigate security concerns over her past drug use and personal conduct. Applicant intentionally omitted the full extent of her past drug use on her 2000 security form and minimized the extent of her drug use in her first Defense Security Service (DSS) interview. Even after she was granted access to classified information in 1998, she continued to abuse cocaine until 1999 and marijuana until September 2001 even though she had made repeated promises to her company in 2000 and to DSS in February 2001 to abstain. While she has recently made positive changes in her life and has a good work record, with her history of relapse, it is too soon to conclude that she has persuasively demonstrated an intent not to use drugs in the future. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 9, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.⁽¹⁾ The SOR alleges specific concerns over drug use (Guideline H) and personal conduct (Guideline E). Applicant retained counsel and responded to these SOR allegations in an Answer⁽²⁾ notarized on May 7, 2003, where she admitted all of the allegations with explanation except for 2.c. and requested a hearing.

The case was assigned to Department Counsel who on June 6, 2003, attested it was ready to proceed. The case was assigned to another judge on June 11, 2003, and was reassigned to me on June 30, 2003. Subsequently, a mutually convenient date for hearing was agreed to; a Notice of Hearing issued on June 17, 2003, set the matter for August 13, 2003, at a location near where Applicant works and lives. Subsequently, on August 8, 2003, the location and date were amended to August 12, 2003.

At the hearing the Government offered four exhibits which were admitted into evidence. (Exhibits 1-4) Applicant's counsel called her to testify along with three other witnesses and offered one exhibit which was admitted into evidence.

(Exhibit A) On rebuttal the Government offered one exhibit, a medical report. After discussion both parties agreed that the entire DSS report of investigation (ROI), including the medical report, would be admitted as Exhibit 5. The transcript (TR) was received on September 3, 2003.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 27 years old, has worked for a defense contractor (Company #1) in State #1 since October 1999. As Applicant needs a security clearance to perform her job, she completed a Security Clearance Application (SF 86) in March 2000. Earlier she worked for Company #2 in 1998 and also applied for a security clearance with them; in that application she denied ever using drugs and her security clearance was granted in August 1998. Applicant attended a university in State #1 from 1994 to 1995; she then studied at another college in State #1 from 1996 to 1997, but did not complete a degree at either school.

On her 2000 SF 86 Applicant stated that she had never been married; however, beginning in 1994 Applicant was in a common law relationship with Husband #1 for six years and filed tax returns with him. The divorce decree was issued in February 2002. Applicant married Husband #2 and changed her name in April 2002. Husband #2 has been in an overseas assignment from December 2002 to December 2003.

Drug Use and Personal Conduct

Applicant admits that in order to keep her job she gave in to pressures from Husband #1 in March 2000 and deliberately falsified her security questionnaire by minimizing the extent of her drug use she reported in response to Question 27. She only revealed her marijuana use from February to March 2000. Husband #1 did not work and used marijuana on a daily basis. Applicant supported him and gave him money from her job. Also, she believed that her drug use did not have to be disclosed as she did not think it would have any impact on her job performance. Also, in her October 2000 interview with the DSS and in a subsequent statement provided to her company security manager in November 2000, Applicant had declared that she had only used marijuana to relieve her medical⁽³⁾ disorders from fibromyalgia syndrome (FMS) which caused pain in her neck and for her obsessive compulsive disorder (OCD). She affirmed in her company statement that she would "learn to live with" her pain and avoid drugs as long as she was employed at Company #1.

In January 2001 in a DSS statement Applicant admitted she used marijuana again after being granted an interim security clearance, but she again minimized her marijuana use in her initial DSS interview. Subsequently, DSS interviewed her doctor⁽⁴⁾ who reported that in 1998 Applicant told him that she was using marijuana on a regular basis and had also used cocaine. After DSS saw this drug use reported in a medical record, the DSS agent confronted Applicant in a second interview. She then admitted her marijuana use extended from 1994 to October 2000 and her cocaine use from 1994 to 1999. In February 2001 she declared to a DSS agent that even though Husband #1 and many of her friends used marijuana on a regular basis, she would not use marijuana again.

However, Applicant had a relapse while she was going through her divorce and used marijuana again on an almost daily basis after work from June to September 2001 when she left Husband #1. She has not seen him since her divorce in February 2002. After she started dating the man who became Husband #2, she stopped using marijuana and also stopped using her prescription drugs.

Applicant never saw a substance abuse counselor; she never attended Narcotics Anonymous.

Job Performance

Applicant's supervisor for one year testified on her behalf and recommended her for a security clearance as she handled her job responsibilities well. He explained that the workplace policy is not to tolerate any drug use; he did not know the basis for the SOR issued to her. (TR 14-20)

Also, a government manager who oversaw the work of the defense contractor before October 2002 recommend Applicant for a security clearance as he saw no evidence of any drug abuse when he observed her work. (Exhibit A)

References

A friend of Applicant's who met her through her husband and has known her for one year testified on her behalf and stated that during the time she's known her she has never seen Applicant use illegal drugs. (TR 20-23)

A friend of Applicant's from junior high school testified on her behalf. She knew Applicant's Husband #1 and confirmed that he used drugs. She noticed a change in Applicant since she married Husband #2. She has never observed Applicant use drugs since she remarried. (TR 24-27)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole, I weighed relevant Adjudication Guidelines as set forth below:

Guideline H - Drug Involvement

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:

[First] 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

[Second] 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:

1. Any drug abuse (see above definition);

Conditions that could mitigate security concerns include:

1. The drug involvement was not recent;

Guideline E - Personal Conduct

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;

3. 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 trust-worthiness determination;

Conditions that could mitigate security concerns include:

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. The Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Drug Use

Applicant failed to mitigate the Government's security concerns over her marijuana use which continued even after she had been granted access to classified information in August 1998. At the time she was using marijuana on a regular basis and also intermittently used cocaine to 1999. After admitting limited marijuana use on her 2000 security form, she made a commitment to her company in a November 2000 statement that she would not use marijuana again while she worked for Company #1, yet she continued to do so. She used marijuana against her doctor's advice. She then made a commitment to DSS in a February 2001 statement not to use drugs again. Again she relapsed in the June to September 2001 period and used marijuana on an almost daily basis. Using marijuana while she held a security clearance is a serious security concern.

Applicant has not mitigated ⁽⁵⁾

security concerns over her repeated marijuana use. Under Mitigating Condition (MC) 3, she has not yet persuasively demonstrated an intent not to abuse any drugs in the future. While she has recently reformed her lifestyle and performs well at work, Applicant's mitigation evidence is not sufficient to mitigate in the light of her repeated relapses: she was not able to keep promises to her company, her doctor, and the DSS to abstain. Further, she has not developed any underpinnings to support her commitment to avoid all future drug use as she has not become involved in a 12-step program or sought any help from a substance abuse counselor. While she has not used any marijuana since September 2001, her repeated pattern of relapse leads to the conclusion that she needs to remain abstinent for a longer period of time to assure that she will not again combine her repeated drug use with her access to classified information. On the other hand, she has mitigated her cocaine use since there is no evidence that she has used cocaine again since 1999. Thus, she has mitigated SOR 1.f. under Mitigating Condition (MC) 1, as the drug involvement was not recent. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 1.a., 1.b., 1.c., and 1.d. under SOR Paragraph 1.

Personal Conduct

The Government persuasively raised security concerns over Applicant's personal conduct in failing to disclose fully all adverse information about her past drug use in answering questions 27 where she minimized her marijuana use and omitted her cocaine use. She similarly misled the DSS agent in her initial interview about the extent of her drug use. It was not until after the investigator had reviewed her medical treatment records and confronted her that she revealed the full extent of her past drug use. Although not alleged in the SOR, she also admitted she was initially granted a security clearance in 1998 after she falsely denied any drug use in an earlier security clearance form. This record shows a consistent pattern of a repeated intent to falsify and minimize her drug use. Thus, both disqualifying conditions 2 and 3 apply.

While she subsequently provided correct information in her second interview, she did not do so until after she was confronted with the medical records (as discussed above) by the DSS agent. Applicant has a good work record according to her current and form supervisors, but that favorable information is not sufficient to mitigate her serious and repeated misconduct. On the other hand, SOR 2.c. is mitigated as she no longer lives with Husband #1 and no longer associates with the friends with whom she used marijuana on a regular basis. Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a. and 2.b., but for Applicant on subparagraph 2.c. under SOR Paragraph 2.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: For 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. Applicant married Husband #2 and changed her name in April 2002. (Answer)

3. DSS interviewed Applicant's treating physician who stated Applicant told him she was using marijuana on a regular basis in January 1998. In April 1999 the doctor advised her to stop using cocaine and marijuana. His records reflect that in December 2000 she said she would not use marijuana any more because of her new job. She stated to the doctor she wanted to rely on prescription medications to control her FMS. (Exhibit 5)

4. In a January 2001 DSS interview this doctor did not recommend Applicant for a position of trust because of her continued use of marijuana as she had not exhibited the best of judgment or maturity. (Exhibit 5)

5. Conditions that could mitigate security concerns include:

1. The drug involvement was not recent;
 2. The drug involvement was an isolated or aberrational event;
 3. A demonstrated intent not to abuse any drugs in the future;
4. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable diagnosis by a credentialed medical professional.