

DATE: December 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15003

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's drug use and personal conduct raise security concerns as she used illegal drugs extensively from 1983 until 2001; and she continued to use illegal drugs (marijuana) to October 2001, after she joined the staff of a defense contractor. She failed to demonstrate clearly her intent to avoid all drug use in the future. She failed to disclose her past and current drug use in her SF 86 even though she certified by her May 2001 signature that her answers were truthful. 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 February 4, 2004. 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 responded to these SOR allegations in an Answer notarized on February 23, 2004, where she admitted all of the allegations and requested a decision without a hearing.

Department Counsel on April 1, 2004, prepared a File of Relevant Material (FORM) and advised Applicant that she had 30 days from receipt of the letter to respond. Applicant received the FORM on April 14, 2004, but failed to provide any response. On May 20, 2004, the case was assigned to me.

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, 37 years old, has worked for a defense contractor from April 2001 to present. Applicant completed a security form (SF 86) in May 2001. (Exhibit 4)

Applicant immigrated to the U.S. in 1972 and became a naturalized U.S. citizen in July 1988. Applicant attended a university where she received a B.A. degree in 1996. She married in 1989, had a child born in November 1989, was separated in 1990, and was divorced in November 1998. Her former husband died in 1999. (Exhibits 4, 5)

Drug Use and Personal Conduct

Applicant has an extensive history of drug use which she failed to reveal on her May 2001 SF 86 in answer to Question 27 on her past illegal use of drugs even though she certified that her answers were true, complete and correct. It was not until she was interviewed by the Defense Security Service (DSS) in December 2001 that she revealed the full extent of her illegal drug use. Most of her drug use occurred between 1983 to 1988. By the age of 17 she had experimented with marijuana, heroin, cocaine, LSD, speed, mescaline, and mushrooms. Her parents had her hospitalized at age 15 for her drug use. She went to family counseling and AA meetings for six months, but did not have any additional counseling. Her family does not know that she has had two drug overdoses. The first when she was 17 was accidental where she was sent to a hospital for three days. She continued to use illegal drugs. In 1987-88 she overdosed on phenobarbital, a seizure medication, when she took her husband's medicine to treat his epilepsy, and was hospitalized for two days. She did not use illegal drugs in 1988 when she was pregnant. Her former husband provided the drugs she used and was heavily involved in using and dealing drugs. Since 1988 she has only used marijuana which she used on a regular basis approximately ten times per year. She purchased 1/8th of an ounce at the cost of \$25 two to three times a year from a friend. She used marijuana last in October 2001 at a party. In December 2001, she initially stated to the DSS that she planned to continue using marijuana in the future. Later in the same DSS Statement she stated that she would not use marijuana in the future as it is an illegal substance; and she wants to keep her job. She had not given any thought to her using marijuana in relationship to her security clearance. She read the company policy and procedures and received security briefings but did not recall seeing any write up concerning the use of illegal drugs and the detrimental affect it could have on her obtaining a security clearance. (Exhibits 5, 6)

Applicant was arrested in 1989 for possession of a class D substance, marijuana, after a neighbor called the police when her husband was in the backyard shooting a gun at a neighbor. The police search the home and found an illegal drug. The case against her was dismissed. (Exhibit 5)

In December 2003 Applicant stated in response to drug interrogatories that she decided to stop using illegal substances in December 2001. However, she did not participate in a drug rehabilitation program. She stated there were not noticeable changes in her lifestyle. She only rarely smoked pot, so not smoking is not noticeable. (Exhibit 6)

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⁽²⁾ (see above definition);
2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

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;

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 then needs to present 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

The Government established security concerns over Applicant's illegal drug use and purchase from 1983 to at least October 2001. Applicant continued to use marijuana in 2001 even after she went to work for a defense contractor and applied for a security clearance in May 2001. Her extensive past drug use raises ample questions about her judgment overall as she continued to use illegal drugs even after applying for a security clearance.

Given the passage of time since 1988, Applicant has mitigated⁽³⁾ security concerns over her prior drug use from 1983 to 1988 of LSD, cocaine, heroin, speed, mescaline and mushrooms as that drug involvement was not recent. However, security concerns persist over her continued illegal use of marijuana until October 2001, even after she began work for a defense contractor and completed her security clearance application. Applicant now states she no longer uses marijuana,

but she provided no evidence other than her own statement in December 2003 to establish this change. Thus, I cannot mitigate that use. Given her inconsistent statements to DSS in her 2001 statement, she failed to demonstrate clearly her intent to avoid all drug use in the future. She provided no recent corroborating evidence to establish that she has remained drug free. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, while I rule for Applicant on subparagraphs 1.a, 1.c., and 1.d., I rule against Applicant on subparagraph 1.b. incorporated under SOR Paragraph 1.

Personal Conduct

The Government clearly established security concerns over Applicant's personal conduct. Applicant's behavior reflects questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information. Thus, she has shown poor judgment in her personal conduct by her continuing drug use and by her falsifying her answer on her past drug use on her SF 86. Conditions that could raise a security concern and may be disqualifying include 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. She failed to disclose her drug use in her SF 86 even though she certified by her May 2001 signature that her answers were truthful.

To rebut and overcome the Government's case, Applicant would have to demonstrate that she has mitigated⁽⁴⁾ this conduct. However, she provided no evidence of mitigation to substantiate that she has reformed, such as evidence of a good work record. Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a. 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.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against 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. Pursuant to 10 U.S.C. Section 986(c)(2) and the Deputy Secretary of Defense implementing memorandum of June 2001, continuous use of an unlawful controlled substance requires a denial of a security clearance.

3. 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

4. Conditions that could mitigate security concerns include: 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; 4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.