

DATE: November 18, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17536

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of being unable to meet her financial obligations. Applicant deliberately falsified her security clearance application and a statement she gave to a Defense Security Service agent by denying she had used illegal drugs in the previous seven years. By deliberately falsifying her security clearance application and statement, Applicant violated 18 U.S.C. § 1001. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 9 July 2003, DOHA issued a Statement of Reasons (SOR), under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 8 August 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 2 September 2003. A hearing was scheduled for 25 September 2003 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, but at the request of Applicant was delayed until 29 October 2003. DOHA received the transcript (Tr.) of the proceeding on 6 November 2003. I kept the record open for 15 days to permit Applicant to submit additional exhibits. Department counsel objected to the admission of two documents Applicant submitted on 17 November 2003 as being not timely filed. I admitted Ex. F, but Ex. E for identification was not admitted because Applicant failed to tie it to any of the delinquent debts alleged in the SOR.

FINDINGS OF FACT

Applicant is 30 years old and graduated from high school in 1991. She is separated from her husband and cares for her six-year-old son.

A summary of the financial considerations allegations against Applicant and their current status are listed in the following chart:

¶	Nature and Amount	Status	Record
1.a.	Judgment; 1999; \$495	Not paid	Tr. 16
1.b.	Judgment; 1998; \$485	Paid	Ex. F
1.c.	Judgment; 1998; \$302	Paid Apr 2002	Tr. 19; Ex. B
1.d.	Collection acct education loan \$360	Paid Mar 2003	Tr. 19; Ex. A
1.e.	Collection acct cable tv \$318	Not paid	Tr. 19
1.f.	Collection acct, hospital, \$189	Not paid	Tr. 20
1.g.	Collection acct, doctor, \$50	Paid Jun 2002	Tr.20; Ex. C

Applicant completed her security clearance (SCA) on 5 April 2000. She answered "yes" to the following questions, but failed to list each and every applicable instance that met the criteria set forth in the question:

34. In the last seven years have you had your wages garnished for any reason?

37. In the last seven years have you had any judgments against you that have not been paid?

38. In the last 7 years have you been over 180 days delinquent on any debts?

39. Are you currently over 90 days delinquent on any debt?

Applicant was arrested in October 1997 and charged with speeding and driving with a revoked license. She was released under an unsecured bond of \$300 but failed to appear for her court date. A writ of execution was filed seeking collection of \$302. Applicant paid this debt in April 2002. Ex. B.

Applicant smoked marijuana on 15-20 occasions between 1991 and April 2002. Ex. 3. In January 1995, Applicant was arrested and charged with possession of marijuana and failure to appear.

Question 27 of Applicant's 5 April 2000 SCA asked if, in the past seven years, she had ever illegally used a controlled substance to include marijuana. Applicant answered "no." Ex. 1 at 9. On 26 March 2002, Applicant provided a written, signed, sworn statement to a Defense Security Service (DSS) agent in which she denied using marijuana in the past seven years. Ex. 2 at 9. In another statement provided to a DSS agent on 18 April 2002 after she took a polygraph, Applicant admitted under oath that "From 1995 to APR 02, I have only smoked marijuana a few times a year like on holidays and at special events." Ex. 3 at 1; Tr. 37.

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. 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to

deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant failed to satisfy three judgments (¶¶ 1.a. - 1.c.) and four other debts turned over for collection (¶¶ 1.d. - 1.g.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant has a history of not meeting her financial obligations. DC E2.A6.1.2.1. She was unable or unwilling to satisfy her debts. DC E2.A6.1.2.3. Although Applicant has paid some of her debts, several remain delinquent. Finding is for Applicant on ¶ 1.b., 1.c., 1.d., and 1.f. Finding is against Applicant on ¶¶ 1.a., 1.e., and 1.f.

Guideline H-Drug Involvement

In the SOR, DOHA alleged Applicant used marijuana from 1991 to 2002 (¶ 2.a.) and possessed marijuana in 1995 (¶ 2.b.). The improper or illegal involvement with drugs raises questions regarding an applicant's willingness or ability to protect classified information. Drug abuse may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. Directive ¶ E2.A8.1.1.1.

The Government's evidence and Applicant's admissions establish by substantial evidence that Applicant used marijuana with varying frequency between 1991 and 12 April 2002 and possessed marijuana in 1995. Applicant's drug abuse (DC E2.A8.1.2.1.) and illegal drug possession (DC E2.A8.1.2.2.) are security concerns. Under the circumstances, her claims to have given up marijuana are not convincing. Applicant failed to establish any of the mitigating conditions. Finding is against Applicant on ¶¶ 2.a. and 2.b.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts in a sworn statement she made to a DSS agent by denying she had used illegal drugs in the previous seven years (¶ 3.b.), and in her SCA by failing to acknowledge her illegal use of drugs (¶ 3.a.), the garnishment of her wages (¶ 3.c), unsatisfied judgments (¶ 3.d), her debts over 180 days delinquent in the past seven years (¶ 3.e), and her current debts delinquent over 90 days (¶ 3.f.). Conduct involving questionable judgment, lack of candor, or dishonesty could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant admits deliberately falsifying her 26 March 2002 statement to a DSS agent and her answer to question 27 of her SCA concerning her use of marijuana in the previous seven years. Answer. Deliberately providing false information concerning relevant and material matters to an investigator is a disqualifying condition. DC E2.A5.1.2.3. As is deliberately falsifying an SCA. DC E2.A5.1.2.2. Answer. After carefully reviewing her testimony and the record, I am not convinced Applicant deliberately falsified her SCA concerning her financial situation. Despite her admissions to deliberately falsifying her SCA and statement to DSS agents regarding her drug use, her testimony is plausible

concerning her lack of knowledge of the delinquent debts she failed to list. She answered yes to the financial questions on the SCA, listed some of her garnishments, judgments, and debts. As some of the bills and judgments were as a result of her leaving her place of residence and not providing a forwarding address, it is credible to believe she was unaware of all of her debts. Finding is for Applicant on ¶¶ 3.c. - 3.f.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was arrested in 1997 and charged with speeding and driving while her license was revoked (¶4.a), arrested for possession of marijuana and failure to appear in 1995 (¶ 4.b.), and violated 18 U.S.C. § 1001 by deliberately falsifying her SCA and her statement to the DSS agent about her illegal use of drugs (¶ 4.c.). A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

Applicant admitted her criminal conduct involving her speeding arrest and her arrest for possession of marijuana and failing to appear. Answer. It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan* at 484 U.S. at 527. Applicant deliberately falsified a signed, sworn statement she completed for a DSS agent for the purpose of obtaining a security clearance and her SCA concerning her use of marijuana. In both documents, Applicant certified that her statements were true, complete, and accurate, and that a knowing and willful false statement was a violation of 18 U.S.C. § 1001. Applicant admits her false statements violate 10 U.S.C. § 1001.

An applicant may be disqualified if allegations of criminal conduct are raised against her. DC E2.A10.1.2.1. Applicant failed to convince me that any of the mitigating conditions listed under the guideline apply. After carefully weighing the evidence, the finding is against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b. For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d. For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f. Against Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2. Guideline H: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d. For Applicant

Subparagraph 3.e.: For Applicant

Subparagraph 3.f. For Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.