

DATE: November 9, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18279

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's drug use, criminal conduct, and personal conduct raise security concerns as she used illegal drugs extensively from 1994 until 1999; and she continued to use illegal drugs (Ecstasy) to 2001, two years after she joined the staff of a defense contractor. She continued illegal drug use even after she had been denied a security clearance in 1999 and was on notice that illegal drug use is against the government's security policies. While she declared she has changed her lifestyle and stopped her extensive use of many illegal drugs in 1999, she failed to mitigate her more recent use of Ecstasy. She failed to demonstrate clearly her intent to avoid all drug use 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 August 8, 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), personal conduct (Guideline E), and criminal conduct (Guideline J). Applicant responded to these SOR allegations in an Answer notarized on September 15, 2003, where she admitted all of the allegations and requested a decision without a hearing.

Department Counsel on November 25, 2003, 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 January 6, 2004, but failed to provide any response. On March 8, 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, 29 years old, has worked for a defense contractor from 1999 to present. Applicant completed a security form

(SF 86) in March 2002 where she disclosed the U.S. Air Force denied her a security clearance in October 1999. (Exhibit 4)

Applicant attended a university from received a B.A. degree in 1999. She married in October 1999. (Exhibit 4)

Drug Use, Criminal Conduct, and Personal Conduct

Applicant has an extensive history of drug use: marijuana from 1994 to 1999, LSD from 1995 to 1996, cocaine from 1995 to 1998. Also she ingested an animal tranquilizer in 1995 and abused Valium in 1996. She also used methamphetamines ('speed') in 1995 and heroin in 1995. Also, she began using the illegal drug Ecstasy in 1995; she continued using this drug until 2001, two years after she had been denied a security clearance. (Exhibits 3, 4)

In September 2003 Applicant stated that she has changed her life-style after she married and has purchased a home; she has two dogs, new hobbies and interests. Her career is "headed in a positive direction." (Exhibit 3)

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);

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:

5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

Conditions that could mitigate security concerns include:

None

Guideline J - Criminal Conduct

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 admissions of criminal conduct
- b. A single serious crime or multiple lesser offenses.

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 extensive illegal drug use from 1994 to at least 2001. Applicant continued to use Ecstasy from 1995 to 2001, two years after she had been denied a security clearance by the Air Force and after she went to work for a defense contractor. Her wide-ranging drug use and misconduct raises questions about her judgment overall, especially when she continued to use drugs even after her security clearance denial in 1999 put her on notice of government policies and laws against drug use.

On the other hand, she stated she has changed her life-style since she married in 1999, but provided no evidence other than her own statement to establish this change. Given the five year passage of time since her earlier drug use, Applicant has mitigated⁽³⁾ concerns over her earlier illegal use of marijuana, LSD, cocaine, Valium, animal tranquilizer, speed, and heroin which ended in 1999. However, since she continued her illegal use of Ecstasy until 2001, her choice to continue drug use is too recent to mitigate. Further she failed to make a statement that she does not intend to abuse drugs in the future and showed questionable judgment in continuing illegal drug use even after she began work for a defense contractor in August 1999. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, while I rule for Applicant on subparagraphs 1.b., and 1.c., 1.d, 1.e., 1.f., 1.g. and 1.h., I rule against Applicant on subparagraphs 1.a. incorporated under SOR Paragraph 1.

Criminal Conduct

The Government established security concerns over Applicant's criminal conduct. Even though she was never

prosecuted or convicted, her multiple drug use was illegal. She provided no evidence other than her own statement that she has been rehabilitated. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a. incorporated under SOR Paragraph 2.

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 she may not properly safeguard classified information. Conditions that could raise a security concern and may be disqualifying include: 5. A pattern of dishonesty or rule violations. Applicant has shown poor judgment in her personal conduct by her continuing drug use.

To rebut and overcome the Government's case, Applicant would have to demonstrate that she has mitigated⁽⁴⁾ this conduct. To her credit she disclosed her drug use in her 2002 SF 86. However, this disclosure cannot erase security concerns over her conduct. Beyond her own statement on her life style changes, she provided no evidence of mitigation to substantiate her good work record. Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 3.a. under SOR Paragraph 3.

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.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.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.