

DATE: February 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22173

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Department Counsel

FOR APPLICANT

David I. West, Esquire

SYNOPSIS

Applicant accumulated unmanageable debt as a result of her husband's failed business, their subsequent divorce, and his discharging his share of the marital debt in bankruptcy shortly after their divorce was final. Applicant paid as much of the debt as she could and discharged the remainder in bankruptcy in 2003. She also smoked marijuana on two or three occasions during a weekend in July 2001. She used marijuana on a beach with strangers and recently acquired friends. Applicant possessed a security clearance when she used marijuana. Her use of marijuana was detected by a randomly administered urinalysis by her employer. Clearance is denied.

STATEMENT OF THE CASE

On September 4, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guidelines H, for drug involvement and F, for financial considerations.

Applicant submitted an answer to the SOR that was sworn to on October 3, 2003, and requested a hearing. Applicant denied the allegation contained in subparagraph 1a, and admitted all remaining allegations, making a correction to the month of the alleged marijuana use in subparagraph 1b. Applicant explained at the hearing that she denied subparagraph 1a because it contained an incorrect month and was confusing about how many times she was alleged to have used marijuana.

The case was assigned to another administrative judge on October 29, 2003, and reassigned to me on November 21, 2003 because of caseload concerns. A notice of hearing was issued on December 2, 2003, scheduling the hearing for December 16, 2003. ⁽²⁾ The hearing was conducted as scheduled. The government submitted eleven documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-11 and admitted into the record without an objection. The Applicant testified at the hearing and submitted three exhibits that were marked as Applicant's Exhibits

(AE) 1-3, and admitted into the record without an objection. Applicant also called one witness to testify on her behalf. The transcript was received by DOHA on December 29, 2003.

FINDINGS OF FACT

Applicant's admission to the allegations contained in subparagraphs 1b & c and 2a of the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits and testimony, I make the following findings of fact:

Applicant is 47 years old, divorced, and the mother of an 18-year-old daughter who is a student and lives with her. Applicant was first married in June 1974 when she was 17 years old. That marriage ended in divorce in January 1976. She remarried in December 1984 and that marriage ended in divorce in March 2002. She has a bachelor of arts degree in journalism with a minor in Soviet political history.

Applicant has worked for government contractors since approximately 1983. She has held several different positions, including photographer and hazardous waste handler. She is presently employed as a hazardous waste operator. She has possessed a security clearance since 1986, at the top secret level from 1986 to 1997 and at the secret level since that time. There is no evidence that any action has ever been taken to revoke or downgrade her clearance for other than administrative reasons or that any complaints or allegations have ever been made against her alleging mishandling of classified material. She also possesses a commercial driver's license (CDL). Applicant has no criminal history, with the exception of being made a ward of court for possessing marijuana when she was either 13 or 14 years old.

Applicant's husband began a business in 1990 that consisted of retail stores selling comics, cards, and collectibles. The business was very successful at first and allowed him to open four stores. In either 1994 or 1995, weather and weather related damage to two of the stores, occurring before and continuing through the Christmas season, had a severe negative impact on the financial condition of the business. A subsequent downturn in the local economy continued the business on an increasing down slide. He acquired a small business administration loan and incurred other debts in failing efforts to make payroll and revive the business. Included in the debts he incurred were three credit cards he opened in Applicant's name, without her knowledge, and used to acquire inventory through the internet.

Applicant's marriage apparently began to fail somewhere around 2000, causing her to separate from her husband in January 2001, and ended with the parties obtaining a divorce in March 2002. While her marriage was failing, she also experienced the death of a close aunt in March 2000, her grandmother in June 2000, and her father in October 2000. She felt "emotionally vulnerable" as a result of these events, and traveled to another state to stay at a vacation condominium she and her husband owned in April 2001. During that stay she befriended some new acquaintances.

Applicant returned to the condominium in July 2001⁽³⁾ for the purpose of moving personal effects from there and listing the condominium for sale in contemplation of a divorce. While at the vacation location she went surfing, and afterwards sat on the beach with the people she had befriended in April and some other persons she did not know. Someone passed around a marijuana cigarette and she used it on one or two occasions. According to GE 2, this conduct occurred both on Saturday and Sunday and totaled either three or four times during which she used marijuana.

Applicant returned to work the week following her use of marijuana and was directed to submit to a random urinalysis on July 21, 2003. She tested positive for the presence of THC and was suspended from work for ten days. She was also directed to obtain a substance abuse evaluation, which she did on August 2, 2001. The evidence obtained during that evaluation did not support a diagnosis of substance abuse or dependence. She was recommended to attend a drug/alcohol information class, which she completed on August 11, 2001. She was also subjected to six unannounced random urinalysis tests over the following 12 months, to be followed by two unannounced random tests in the next two years. She is still subject to that testing and has tested negative on all urinalysis tests administered since July 2001. The counselor suggested that Applicant disclose her marijuana use to her family, which she did, including her then 15-year-old daughter.

Applicant's divorce decree provided that she and her husband were to split all marital indebtedness evenly, including those debts acquired by her husband in the pursuit of his business. The marital residence was sold and the proceeds were used to satisfy debts that were secured by liens that had been placed against the residence. Applicant used her portion of

the proceeds received from the sale of the vacation condominium to satisfy additional debts. She also reached an agreement with the three credit card companies on the accounts that had been opened by her husband without her knowledge in the pursuit of his business venture and satisfied those creditors. Meanwhile, her husband filed for and received a discharge in bankruptcy, leaving her totally responsible for all the marital debts. He also, more or less simultaneously, moved to a foreign country, and she believed he had no intention of returning to the United States.

Applicant consulted an attorney and was advised to file for chapter 7 bankruptcy protection. She did so on March 4, 2003, listing \$142,000.00 in debt that was attributed to business debt of her ex-husband.⁽⁴⁾ Applicant was granted a discharge in the bankruptcy on August 28, 2003. Applicant's recent credit report (AE 2) and testimony discloses she is presently financially solvent, secure, and that her income satisfactorily exceeds her monthly living expenses.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guidelines H, pertaining to drug involvement, and F, pertaining to financial considerations, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁵⁾ The government has the burden of proving controverted facts.⁽⁶⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁷⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁸⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

No one has a right to a security clearance⁽¹²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹⁴⁾

CONCLUSIONS

Under Guideline H, illegal drug involvement raises questions about an individual's willingness or ability to protect classified information. Involvement with or use of an illegal drug indicates unwillingness or inability to abide by the law. Cleared employees must respect regulations whether they agree with them or not. If they do not respect the rules on illegal substances, they may not respect the rules designed to protect classified information.

Appellant used marijuana on at least two days in July 2001 while sitting on a beach with strangers and recently acquired new acquaintances. When she used the marijuana she worked for a defense contractor and possessed a security clearance. Disqualifying Conditions (DC) 1: *Any drug abuse*; and 5: . . . *Recent drug involvement, especially following the granting of a security clearance, . . . , will almost invariably result in an unfavorable determination* apply in this case.

There is no evidence that Applicant has abused any controlled substance, with the exception of a brief period when she was either 13 or 14 years old, other than on the one weekend in July 2001. She received a favorable drug evaluation, successfully completed the recommended drug information class, has expressed an intention to never again abuse drugs,

and has not been reported as failing any of the random urinalysis tests that were directed. Mitigating Conditions (MC) 2: *The drug involvement was an isolated or aberrational event*; 3: *A demonstrated intent not to abuse any drugs in the future*; and 4: *Satisfactory completion of a prescribed drug treatment program . . . without recurrence of abuse, and a favorable prognosis by a credentialed medical professional* apply in this case. Less than three years has passed since Applicant's use of marijuana, and she still remains subject to random urinalysis tests as a direct result of that use. Accordingly, I do not find MC 1: *The drug involvement was not recent* applies.

Applicant, at least implicitly, attributes her use of marijuana to the "emotionally vulnerable" state she found herself in as a result of the break up of her marriage and the deaths of three close relatives. Whatever the cause, her marijuana use on a public beach with strangers and others displayed a serious lack of judgment. She knowingly placed herself in a situation where she could have been coerced or exploited based on the risk her indiscretion. Such use of a controlled substance, itself displaying a lack of inhibition, also posed the risk of an involuntary disclosure of classified information.

Despite the applicability of the several mitigating conditions noted above, I find Applicant's gross disregard of the multiple prohibitions placed upon her use of a controlled substance by the criminal law, her employment, possession of a CDL, and possession of a security clearance make it inconsistent with the national interest to continue her access to classified information. Guideline H is decided against Applicant.

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant's financial problems resulted from her husband's failed business and his filing for bankruptcy shortly after they obtained a divorce. She relatively quickly satisfied her personal obligations and those her husband had acquired in her name without her knowledge. She discharged her responsibility for his bad business debt in bankruptcy. Applicant is now financially stable.

Based on all the evidence presented in this case, I find that Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case. I also find that Mitigating Conditions (MC) 3: *The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*; and DC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply in this case.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find that Applicant has mitigated this security concern. Guideline F is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline H: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

SOR ¶ 1-Guideline F: For the Applicant

Subparagraph a: For the 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 Applicant. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Although the written notice of hearing was issued on December 2, 2001, Applicant was contacted by Department Counsel on or before November 21, 2003 and agreed to the scheduled date.
3. GE 2 lists this trip as occurring in June 2001. Department Counsel contended that because Applicant tested positive on a urinalysis administered on July 21, 2001 she used marijuana on more occasions than the one weekend to which she admitted. I am satisfied, based upon the evidence and Applicant's demeanor while testifying, the June entry in GE 2 is in error and the trip in question actually occurred in July 2001.
4. GE 7, Schedule F, lists loans from Applicant's mother in an unknown amount. Applicant credibly testified her then husband had obtained a \$30,000.00 loan from her mother without Applicant's knowledge, purportedly for use in his business.
5. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
6. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
7. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
8. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
9. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
12. *Egan*, 484 U.S. at 528, 531.
13. *Id* at 531.
14. *Egan*, Executive Order 10865, and the Directive.