

DATE: May 16, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22685

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's continuing refusal to acknowledge that she knowingly participated in illegal activity precludes a finding that it is now clearly consistent with the national interest to grant her access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On September 30, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on October 25, 2002. The case was assigned to the undersigned on January 23, 2003. A Notice of Hearing was issued on February 4, 2003, and the hearing was held on February 26, 2003. The transcript was received on March 12, 2003.

FINDINGS OF FACT

Applicant is 34 years of age. She is employed as a systems administrator by a defense contractor.

In October 1991, applicant was charged with three felony offenses: (1) Conspiracy to Commit a Crime, (2) Embezzlement of Public Money, and (3) Aid By isrepresentation - Over \$400.00. In August 1992, she was convicted of Aid By Misrepresentation - Over \$400.00, and a second charge relating to her willful use of a false statement to obtain and retain aid for children in the amount of \$6,491.00. She was sentenced to one day in jail, fined \$200.00, ordered to serve 25 days of community service, ordered to pay \$6,491.00 in restitution (at the rate of \$75.00 per month commencing in September 1992)⁽¹⁾, and placed on probation for three years. At the sentencing hearing the Court

reduced applicant's criminal offenses to misdemeanors.

In a signed, sworn statement that she gave to a Special Agent of the Defense Security Service (DSS) in May 2002 (Exhibit 3), applicant described her involvement in the criminal conduct as follows:

I was working with (coworker and friend hereinafter identified as X) who had previously worked at the Department of Social Services (DSS). X still had friends that worked there. I was 18 years old at the time and X was 34 years old. X and I became friends and would hang out after work. After we had known each other for several months, she told me about problems she was having with her oldest daughter who was stealing money from her and writing checks on her checking account. X said that she needed to close her bank account because of that. X asked me if I had a bank account and told me she had to cash some checks that were from the DSS for child support. The checks would vary in amounts from \$700.00 to \$1500.00. Since we were friends, I deposited the checks in my checking accounts because I could not just cash the checks because I did not have enough in the account. I would then withdraw money from the ATM machine, \$300.00 at a time to give X her money. Basically, X was using my bank account as her own. This went on for probably eight or nine months until I finally questioned her about it. X told me that these checks were from the DSS based on monies received for child support and that is why the amounts varied. I just felt that something was not right and told her I could not let her use my bank account any more. X and I worked at the same location (name deleted) when I first met her and within a few months of me cashing the checks for her, X went back to work for the DSS. An investigator for the District Attorney (county deleted) contacted me and told me that X and several other of her coworkers from DSS, their family and friends were involved in this Welfare Fraud. Because they had pulled the checks that she had given me to cash and saw my name, signature and bank account number, I was then implicated as being involved. I told the investigator that I did not know anything about welfare fraud and explained to them that X had asked me to cash the checks because of problems she was having with her daughter.

I received a notice to appear in court, I was never arrested and transported to jail. I was assigned a public defender and worked with him for awhile and could never prove that I did not keep the money because everything I gave X was in cash. The 1st two charges were dropped and because I could not prove my story, I was convicted of the Welfare charge, which was a misdemeanor. I did not know what X was doing, she never confided in me that she was stealing from the DSS (emphasis added). I never kept any of the money for myself. It was all her money. I deposited the checks that X had asked me to cash and withdrew the money from an ATM machine and gave her cash. The amount of \$6,491.00 reflects that amount of checks that went through my bank account. This is the money that (state agency) is asking me to pay in restitution.

When I look back on it now, I was so naive and so trusting. It was not my intention to defraud or steal any money. As a single parent, I was working and going to school and was setting goals for daughter and myself. I would never think of doing anything illegal or anything like this. I have not been involved in anything like this since.

Applicant's account of her involvement in the fraud, particularly her denial that she knowingly participated in it, differs sharply from how *her attorney* described it in papers he filed with the court seeking leniency (Exhibit 5). In pertinent part, he described applicant's participation as follows:

(Applicant) was involved in cashing 2 groups of checks for the defendant, X, in 1987 and again in 1989.

X had been friendly and supportive to (applicant), who was an unmarried mother who had just turned 19 and was supporting herself and her infant daughter. X was also her supervisor, a woman almost twice her age (34 years old) and she displayed concern for (applicant) the way (applicant's) own mother never did. X had been (applicant's) supervisor for some time when in 1987 she first approached (applicant) to assist her because of "problems with her checking account" due to her daughter forging her checks.

X had 3 teenage daughters who (applicant) knew were often the source of behavior problems. X told her that her oldest daughter had stolen some of her checks and cashed them by forging X's signature. X said she had to close out her checking account and needed a way to cash checks, so she asked (applicant) to let her put checks through X's checking account until X could straighten out her old checking account and arrange to open a new, more secure checking account. X believed her and had no reason to believe X had lied to her. All the checks X deposited through (applicant) in 1987

were only made payable to X.

After some time, (applicant) saw that most of the checks were . . . welfare checks and the amounts of the checks, even though they were payable to X, seemed too large. Although she was not familiar with the welfare . . . payment system, she eventually gathered the courage to ask X why there were so many checks and why they were so large. X eventually admitted she was involved in cashing welfare checks to which she was not entitled. This was the first time (applicant) knew that anything illegal was involved in X's cashing of these checks (emphasis added), and asked X to "please stop" cashing any other checks through her checking account.

X again approached (applicant) in 1989 and asked if she could help her cash some checks again. This time (applicant) was aware that what X asked was wrong (emphasis added) and at first said she would like to but should not help her do anything like that again. However, X begged and pleaded with her, saying that she was in desperate financial straights and reminding (applicant) of everything X had done to help (applicant) as her supervisor. X also said that she only needed (applicant's) help for 2 months. (Applicant) finally agreed to help her for only 2 months (emphasis added). Later she learned that the checks to be cashed would be coming in her own name. She nonetheless helped X, but when the checks continued to come after 2 months, she told X she just could not help her anymore because it was wrong (emphasis added). (Applicant) made sure the checks were simply cashed and the money turned over to X; she kept none of the money from the 1989 series of checks.

At the hearing applicant offered yet a third explanation, to wit: when she found out from X that what X was doing was illegal, she stopped helping her (TR at 34). Applicant could not explain why her attorney would prepare a document containing such a different version of events (TR at 49-50; 55-56).

In 1994, applicant was arrested and charged with (1) Driving Under the Influence of Alcohol and (2) Driving Under the Influence of Alcohol with a .08% Blood Alcohol Level. She pleaded guilty to Count 2. She was fined \$1,500.00.

The Government alleges that applicant intentionally falsified material facts (1) in response to Question 21 on a Security Clearance Application (SCA) that she executed in March 2002⁽²⁾ and (2) in a signed, sworn statement that she gave to the Defense Security Service in May 2002.

With respect to the SCA, Question 21 asked if applicant had ever been charged with or convicted of any felony offense? Applicant responded "no." Her "no" response was false because, as noted above, she had been charged with one or more felonies in connection with the welfare fraud incident. Applicant denies that she intentionally provided the incorrect answer. She testified, in essence, that she knew she was convicted of a misdemeanor, but never knew that the original charges filed against her were felonies. Considering the evidence as a whole, I find that applicant did not intentionally provide the false response to this question.

With respect to her signed, sworn statement, it is clear that applicant intentionally provided false, material information when she stated, in essence, that she did not know she was engaging in illegal activity when she assisted X with the check cashing. Exhibit 5, prepared by her attorney with information undoubtedly received from her,⁽³⁾ and filed with the court, clearly establishes this fact.

Two of applicant's coworkers and her husband appeared at the hearing and testified on her behalf. All three witnesses believe that applicant is a reliable person. A Performance Appraisal (Exhibit I) establishes that her work performance is "outstanding."

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Guidelines are applicable:

Criminal Conduct

Disqualifying Conditions

1. E2.A10.1.2.1: Criminal conduct.
2. E2.A10.1.2.2: A single serious crime or multiple lesser offenses.

Mitigating Conditions

None.

Personal Conduct

Disqualifying Conditions

1. E2.A5.1.2.3: Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security or trustworthiness determination.

Mitigating Conditions

None.

CONCLUSIONS

The evidence establishes that in the late 1980s, applicant helped a friend commit welfare fraud. Although she continues to deny that she knew the friend was engaging in illegal activity at the time she was helping her, the facts speak otherwise. It is simply inconceivable that applicant's attorney would have dreamed up the detailed version of events he presented to the court on her behalf. This version of events, which clearly acknowledges applicant's knowing participation in the illegality, had to come from applicant. Applicant's involvement in this illegal activity reflects adversely on her judgment, reliability and trustworthiness, and strongly suggests that she cannot be relied upon to safeguard classified information.

It has been more than ten years since applicant engaged in the illegal activity. During that time, applicant has led a very productive life, as evidenced by, among other things, her receipt of a Bachelors degree after attending night school for six years while working full time and raising a daughter as a single mother. These facts, as well as the strong character references she has offered into evidence, are positive factors. Had applicant been truthful about her involvement in the illegal activity (1) when speaking with the DSS agent in May 2002, (2) in her signed, sworn statement dated May 2002, and (3) while testifying at the hearing, these facts would have gone a long way toward mitigating her criminal conduct. (4) However, applicant was not truthful in her dealings with the DSS agent and while she was testifying, and in assessing applicant's current security-worthiness, this dishonest and criminal conduct (5) cannot be ignored. Considering the evidence as a whole, particularly applicant's continuing statements that she did not know X was engaging in illegal activity when she was cashing checks for her, it is not now clearly consistent with the national interest to grant her access to classified information.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: AGAINST 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.

Joseph Testan

Administrative Judge

1. It is unclear if applicant has made complete restitution.
2. Applicant actually executed the SCA on March 15, 2001.
3. Applicant testified that she "went through the entire facts" of her case with her attorney (TR at 50, 55-56).
4. Her 1994 alcohol-related conviction has no current security significance.
5. This conduct violated 18 U.S.C. 1001.