

DATE: April 16, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-25150

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Catherine Engstrom, Esq., Department Counsel

#### **FOR APPLICANT**

Tammy L. Richards, Personal Representative

### **SYNOPSIS**

Applicant's answers to two questions on her personnel security application were false. She admitted the falsifications, but supplied credible evidence to demonstrate that the falsifications were not deliberate and were the result of honest mistake. Applicant's record contains no other evidence of conduct raising a security concern. She appears trustworthy and able to safeguard classified material. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 25, 2003, under the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on July 12, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on October 16, 2003. On November 19, 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on December 1, 2003.

### **FINDINGS OF FACT**

The SOR contains three allegations of disqualifying conduct under Guideline E, Personal Conduct. In her answer to the SOR, Applicant denied all three allegations.

Applicant is 38 years old, married, and the mother of four children, ages 15, 14, 13, and 11. She is employed as a mail clerk for a government contractor.

As a teenager, Applicant used marijuana, PCP, and alcohol. In 1987 when she was approximately 22 years old, she

began using crack cocaine. She used Social Security payments from her son's deceased father to support her drug habit. Between 1992 and 1995, Applicant used crack cocaine several times a day. During this time, she was also using alcohol two or three times a week.

In November of 1995, when she was pregnant with a child she later gave up for adoption, Applicant sought medical treatment and voluntarily enrolled in a substance abuse program. The day she entered the program, she tested positive for drug use. She has not used illegal drugs or alcohol since November 1995. She does not intend to use drugs or alcohol in the future.

From November 1995 to December 1996, Applicant was enrolled in an outpatient drug and alcohol treatment program that required her attendance and active participation three times a week. She participated in group, family, and one-on-one counseling. After a year of active participation, and with the support of her family, Applicant successfully completed the program and was awarded a certificate of completion in December 1996. Since that time, she has acquired a responsible job, married, and focused her attention on raising her four children, three of whom are now in their early teen years.

Applicant's husband appeared as a character witness on her behalf. He described her courage in overcoming her addictions, her commitment as a wife and mother to family life, and her good character. Applicant submitted seven letters from coworkers and friends attesting to her strong work ethic, her determination to succeed and to be of service to others, and her good character.

On January 17, 2002, Applicant completed, signed and certified a security clearance application (SF-86). Question 27 on the SF-86 reads as follows:

### **Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs**

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

Applicant answered "no" to Question 27. In her testimony, Applicant admitted that her last use of crack cocaine was in November 1995, on the day she entered the substance abuse program, six years and two months before she answered Question 27. She denied deliberately falsifying her answer. In January 2002, in determining the number of years since her last drug use, she counted as follows: 1995, 1996, 1997, 1998, 1999, 2000, 2001, and concluded that more than seven years had passed since her last use of illegal drugs. (Tr. 27.)

Question 30 on the SF-86 reads as follows:

### **Your Use of Alcohol**

In the last 7 years, has your use of alcoholic beverages (such a liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)? Do not repeat information reported in module [19] on form SF86 (Your Medical Record).

Applicant answered "no" to Question 30. In her testimony, Applicant admitted she had been enrolled in a year-long drug and alcohol treatment program from November 1995 until December 1996. The drug and alcohol treatment program ended in December 1996, five years and two months before Applicant answered Question 30. Applicant testified that she had not had any alcohol to drink since entering the program in November 1995. She denied deliberately falsifying her answer. In January 2002, in determining the number of years since her participation in the drug and alcohol treatment program, she counted as follows: 1995, 1996, 1997, 1998, 1999, 2000, 2001, and concluded that more than seven years had passed since her participation in the alcohol-related treatment program. (Tr. 37.)

On March 21, 2002, Applicant was interviewed by a special investigator of the Investigations Service of the United States Office of Personnel Management (OPM). In the presence of the OPM special investigator, Applicant completed and signed an affidavit. In her affidavit Applicant stated: "I answered the question[s 27 and 30] dishonestly (on the

form) because I did not think the drug use and treatment was within the seven-year period."

In her testimony, Applicant attributed her failure to accurately count the years since her last use of illegal drugs and her participation in the substance abuse program to mistake and not to intentional falsification or dishonesty. She said she thought the use of the word "dishonestly" in her affidavit had been suggested by the special investigator. The special investigator did not appear as a witness.

## 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 and mitigating conditions 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. ay 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 E, Personal Conduct**

In the SOR, DOHA alleged Applicant demonstrated disqualifying conduct under Guideline E (Personal Conduct) when she failed to disclose in response to Question 27 on her SF-86 that she had used crack cocaine and had tested positive for its use on November 14, 1995, which was less than seven years from the time she completed her SF-86 in January 2002 (¶ 1.a(1) and ¶ 1.a(2)) and that she had failed to disclose alcohol-related treatment within seven years from the time she completed her SF-86 in January 2002. (¶ 1.b.) DOHA alleged Applicant's omissions were intentional falsifications of her SF-86. Applicant attributed the "no" answers to Questions 27 and 30 to an honest mistake in calculation.

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, such as falsification, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. When an applicant deliberately provides false or misleading information concerning relevant and material matters to an investigator or other official representative in connection with a personnel security or trustworthiness determination, this raises a security concern and may be disqualifying. E2.A5.1.2.3. The security

concern resulting from falsification can be mitigated if it was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. E2.A5.1.3.2.

Applicant denied deliberately providing false information on her SF-86. When questioned by the OPM investigator, she admitted she had given negative answers to questions 27 and 30 because she thought seven years had passed since she had used illegal drugs and had completed the drug and alcohol rehabilitation program. She answered the investigator's questions fully and truthfully.

We begin by examining whether Applicant's "no" answers to Questions 27 and 30 on her SF-86 constitute deliberate falsification of her security clearance application. The record clearly indicates that Applicant completed and signed a security clearance application on January 17, 2002 on which Questions 27 and 30 were answered "no." All other questions were answered truthfully. Applicant's explanation, that her two "no" answers were the result of an honest mistake in counting back seven years, is credible. I did not observe in her demeanor any attempt to deceive or to be untruthful. The record does not reflect attempts by Applicant to conceal her past. The character testimony presented by Applicant's husband and the seven letters from friends and colleagues admitted into evidence as her Exhibits A through G attested to her honorable character. A friend who grew up with Applicant and has known her for 26 years wrote this about her:

[Applicant] is an inspiration to those persons who have faced challenging diversities in life. She has worked diligently in putting her life in order, and displays confidence in her abilities, and in her achievements. She is truly an enterprising person, and sets high standards for herself both personally and professionally. Once those standards are in place, [Applicant] goes forth in making her dreams come true for both her and her family.

In ISCR Case No. 98-0761 at 3 (Dec. 27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the evidence as a whole and I have evaluated Applicant's conduct under the whole person concept of the Directive. I do not find Applicant's "no" answers to Questions 27 and 30 on her SF-86 to be deliberate falsifications under Guideline E of the Directive. Applicant's explanation that the "no" answers were honest mistakes in calculating the passage of time is credible. I conclude that she has successfully overcome the Government's case opposing her request for a security clearance. Accordingly, the allegations in the SOR are concluded for the Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline E: FOR APPLICANT

Subparagraph 1.a (1): For Applicant

Subparagraph 1.a (2): For Applicant

Subparagraph 1.b.: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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**Joan Caton Anthony**

**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.