

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: When she was 25 years old, Applicant falsified her security clearance application by deliberately denying she had used drugs illegally or had received mental health treatment. Applicant mitigated personal conduct and criminal conduct security concerns by confession, remorse, and rehabilitation. Clearance is granted.

CASENO: 03-19355.h1

DATE: 05/04/2005

DATE: May 4, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19355

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

When she was 25 years old, Applicant falsified her security clearance application by deliberately denying she had used drugs illegally or had received mental health treatment. Applicant mitigated personal conduct and criminal conduct security concerns by confession, remorse, and rehabilitation. 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 23 November 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision—security concerns raised under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 8 December 2004, but declined a hearing. On 9 December 2004, Applicant submitted a letter requesting a hearing before an administrative judge. The case was assigned to me on 9 February 2005. On 15 March 2005, 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 hearing transcript (Tr.) on 24 March 2005.

FINDINGS OF FACT

Applicant is a 29-year-old senior designer for a defense contractor. At her place of employment, Applicant is known as an honest, dedicated, and hard-working employee.

From 1996-98, Applicant sought and received mental health counseling. She saw a mental health counselor (a psychologist) while she was enrolled at university. She also sought mental health counseling while she was at home, away from her university. She sought counseling because she was depressed about her future and getting a job. One of the doctors she saw prescribed Prozac. Although it was prescribed for daily use, she only took it once every other day. After three months, she stopped using the drug because it made her worry. Because of a conviction for driving under the

influence of alcohol, Applicant sought treatment from a physician. The doctor referred Applicant to her husband, who is a psychiatrist. She saw him two or three times. He diagnosed her as having mild clinical depression and gave her a prescription for Celexa. She returned to the psychiatrist once more but has not felt the need to seek counseling since.

Applicant used numerous illegal substances. Once during high school, she huffed computer cleaner to get high. In 1995 or 1996, she put hallucinogenic mushrooms on a pizza and ate it. In 1999, she bought mushrooms from a shop in Amsterdam and ate them. She tried ecstasy a few times while in high school, but did not like the effect it had on her. Nevertheless, she used it several times while in college. She bought the ecstasy one pill at a time from a friend.

Applicant used crystal methamphetamine less than 15 times by snorting it up her nose and by injecting herself with a needle. She gave friends money to buy the methamphetamine for her. She bought cocaine approximately five times, but used it on as many as 25 occasions. She used marijuana less than 20 times.

Applicant was prescribed Percocet when she had her wisdom teeth pulled in 1997 or 1998. She used the drug until the prescription ran out, well past the time the pain from the surgery had dissipated.

Applicant asserts that she has not used any drugs illegally since 1998.

On 31 January 2001, Applicant completed a security clearance application (SCA). In it, she certified that the form was "true, complete, and correct" to the best of her knowledge and belief and acknowledged that a "knowing and willful false statement" therein could be punished under 18 U.S.C. § 1001. Question 27 asked if, in the previous seven years, she had "illegally used any controlled substance" or prescription drugs. Question 19 asked if, in the previous seven years, she had consulted a mental health professional (psychiatrist, psychologist, counselor, etc.) or another health care provider about a mental health related condition. Applicant answered "no" to both questions. Ex. 1 at 8, 6.

In May 2003, Applicant was interviewed by a Defense Security Service (DSS) agent and completed a signed, sworn statement. In it, she admitted her mental health counseling and her considerable drug use. She claimed she failed to list the mental health treatment because she "did not see anyone on a regular basis and because it was not a severe diagnosis [she] did not think it was relevant even though a question asked for it on the security form." Ex. 2 at 4.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on her SCA by deliberately failing to disclose her illegal use of drugs in the previous seven years (¶ 1.a) and failing to disclose she had received treatment for a mental health-related condition (¶1.b). Applicant admitted both allegations. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline E. Applicant deliberately failed to disclose on her SCA that she had an extensive history of drug abuse and several visits to mental health counselors. An applicant's drug use and history of mental health counseling are relevant and material to a determination of an applicant's security worthiness. Applicant deliberately omitted relevant and material facts from her SCA. DC E2.A5.1.2.2. As late as May 2003, when she was interviewed by the DSS agent, she was unable to accept complete responsibility for her actions. Instead, she rationalized her omission concerning mental health treatment by claiming she did not think her treatment was relevant because it was neither regular nor severe.

On the other hand, at the hearing Applicant freely admitted her omissions, took full responsibility for her actions, showed great remorse, and pledged she had become a different person. I found her confession, statement of remorse, and vow that her life has changed to be credible. By admitting her omissions she took positive steps to significantly eliminate vulnerability to coercion, exploitation, or duress. MC E2.A5.1.3.5. None of the other listed mitigating conditions apply.

Security clearance decisions are not an exact science, but are predictive judgments about a person's security suitability in light of the person's past conduct and present circumstances. It includes an evaluation of the whole person using the adjudicative factors in the Directive ¶ E2.2.1. There is no doubt Applicant's deliberate omissions from her SCA represent serious, deliberate misconduct. Directive ¶¶ E2.2.1.1, E2.2.1.2. But the conduct was isolated and occurred a number of years ago. Directive ¶ E2.2.1.3. Although she was 25 years old when she completed her SCA, it is clear she has matured significantly since then. Directive ¶ E2.2.1.4. There is no potential for exploitation based on her conduct. Directive ¶ E2.2.1.8. I conclude the likelihood of recurrence is remote. Directive ¶ E2.2.1.9. Under the circumstances, I find for Applicant.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant violated 18 U.S.C. § 1001 by deliberately failing to report her drug use and mental health care related treatment on her SCA. ¶ 2.a. Applicant admitted this allegation. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of 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*, 484 U.S. at 527. Applicant knowingly and willfully made materially false statements in her SCA. An applicant may be disqualified from holding a security clearance by committing a serious criminal offense, such as a violation of 18 U.S.C. § 1001. DC E2.A10.1.2.2.

Applicant's criminal behavior was not recent. Her last offense occurred when she falsified her SCA, over four years ago. The criminal offense was not an isolated incident. *See* MC E2.A10.1.3.2. After applying the adjudicative process factors listed in Directive ¶ E2.2.1 and discussed above, I find for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline E: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

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

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).

