

KEYWORD: Drugs; Personal Conduct; Financial

DIGEST: Applicant is 40 years old and works as a program analyst for a defense contractor. She has a history of drug abuse that extended from 1980 until 1997. In 1997 she was terminated from her job because she failed a random drug screen. She intentionally concealed her drug history when she completed her security clearance application in 2000, and during an initial interview with a governmental investigator in 2001. From 1998 until 2004, she accrued a substantial amount of debt that she was unable to pay. Applicant did not mitigate the security concerns raised by her drug involvement, personal conduct, and financial considerations. Clearance is denied.

CASENO: 03-20213.h1

DATE: 02/15/2006

DATE: February 15, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20213

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 40 years old and works as a program analyst for a defense contractor. She has a history of drug abuse that extended from 1980 until 1997. In 1997 she was terminated from her job because she failed a random drug screen. She intentionally concealed her drug history when she completed her security clearance application in 2000, and during an initial interview with a governmental investigator in 2001. From 1998 until 2004, she accrued a substantial amount of debt that she was unable to pay. Applicant did not mitigate the security concerns raised by her drug involvement, personal conduct, and financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On September 2, 2004, the Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guidelines H (Drug Involvement), E (Personal Conduct), and F (Financial Considerations) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to the Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

Subsequently, Applicant filed an undated Answer and elected to have the case decided on the written record in lieu of a hearing. On February 18, 2005, Department Counsel prepared a File of Relevant Material (FORM), and provided Applicant with a complete copy on September 6, 2005. [\(1\)](#)

Applicant had 30 days from the receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on September 8, 2005, and did not submit any additional information. This case was assigned to me on November 28, 2005.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in her Answer to the SOR, I make the following additional findings of fact:

Applicant is 40 years old and has been employed as a program analyst for a federal contractor since August 2000. Prior to this position, she worked for federal contractors for a number of years. She is divorced and the sole support for her three children. She held a secret security clearance since 1997, and filed a security clearance application (SCA) for a top secret clearance in September 2000. ⁽²⁾

Between 1980 and December 1996, Applicant smoked marijuana about twice a week. She did not smoke while she was pregnant or her children were infants. ⁽³⁾ In January 1997, she was terminated from her position because a random urinalysis done by her employer showed positive results for the presence of illicit drugs. She challenged the accuracy of that drug screen, by submitting the results of a negative urine screen taken two days later and analyzed by an independent lab. ⁽⁴⁾ It is unclear whether the results of the employer initiated drug screen had been reported when she took the private drug screen.

When Applicant signed her SCA, she certified her answers were "true, complete, and correct." In response to Question 27, 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 a controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenic (LSD, PCP, etc.) or prescription drugs*), she answered "No." This answer was false.

After meeting with a government investigator in August 2001 regarding her answers to the SCA, Applicant submitted a supplemental explanation, which specifically addressed the drug allegations and other matters in the SCA. She said, "I did not list any use of illegal, habit forming or dangerous drugs, to include marijuana, on my SCA, and denied any drug abuse during my initial subject interview on 4 May 01 because my past drug abuse is a source of embarrassment for me." ⁽⁵⁾ (Emphasis added) She also admitted that she asked her former husband to lie to the investigator about her drug history "because I needed this security clearance. I did not want the unfavorable information [he] could provide, that I felt was no longer relevant, to jeopardize my career." ⁽⁶⁾

In or about September 2005, Applicant filed an Answer that contradicted her 2001 statement. She denied that she deliberately intended to conceal the drug related activity, but thought she did not need to report her former conduct because it fell outside of the seven-year guideline. She also denied that she ever asked her ex-husband to lie for her about her previous drug abuse. She stated she no longer used drugs.⁽⁷⁾ Given her earlier admissions and explanations, I do not find these later explanations and denials credible.

From approximately 1998 until 2004, Applicant accumulated substantial debt that she was unable to pay. During the August 2001 meeting with the investigator, she acknowledged her delinquent debts and stated that she could not pay them because she did not have sufficient money and her former husband stopped paying child support in 1998.⁽⁸⁾ As of March 2004, she owed the following debts: \$4,037.00 to a credit card company (SOR ¶ 3.a.); \$949.00 for household goods (SOR ¶¶ 3. b. and 3.h.); \$1,000.00 in medical bills (SOR ¶¶ 3.d., 3.f., 3.i., and 3.k.); \$185.00 in utilities (SOR ¶ 3.g.); and \$813.00 to consumer loan companies (SOR ¶¶ 3.c., 3.e., and 3.j.).⁽⁹⁾ Although she asserted in her Answer that these debts, totaling \$6,984.00, were discharged in bankruptcy in July 2004, there are no documents in the record to support that contention or her claim that she is now on the road to financial stability.⁽¹⁰⁾

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth the criteria that must be evaluated when determining security clearance eligibility. Within those guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or

inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽¹¹⁾ The decision to deny an individual a security clearance request to an individual is not necessarily a judgment of the applicant's loyalty.⁽¹²⁾ Instead, it is a determination that the applicant has not met the strict guidelines established by the Department of Defense 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.⁽¹³⁾ The Directive presumes a rational connection between past proven conduct under any disqualifying condition and an applicant's present security suitability.⁽¹⁴⁾

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the position of the government.⁽¹⁵⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance."⁽¹⁶⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline H - Drug Involvement: A security concern may exist when 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.

Guideline E - Personal Conduct: A security concern may exist when 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.

Guideline F - Financial Considerations: A security concern may exist when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

The applicable qualifying and mitigating conditions, raising either security concerns or mitigating security concerns

applicable to this case, are set forth and discussed in the Conclusions section below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and the application of the appropriate adjudicative factors and legal standards, including the "whole person" concept, I conclude the following with respect to the allegations set forth in the SOR:

Guideline H: Drug Involvement

The Government established its case under Guideline H. Based on the evidence and Applicant's admission that she used marijuana approximately twice a week from 1980 until December 1996, and was terminated after a positive drug screen in January 1997, Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*Any drug abuse*) applies.

In mitigation of this condition, Applicant stated that she no longer uses drugs. However, her statement alone, without additional corroboration, is given little weight and is insufficient to mitigate a 16-year history of intermittent drug abuse, in view of her recent attempts to conceal the problem and failure to consistently respond truthfully to the government's inquiry. Thus, none of the mitigating conditions apply, including, Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.3. (*A demonstrated intent not to abuse drugs in the future*), and DI MC E2.A8.1.3.1. (*The drug involvement was not recent*). Accordingly, Applicant has not mitigated the security concern based on drug involvement.

Guideline E: Personal Conduct

Based on the evidence, the Government established its case under Guideline E, specifically, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*). Applicant admitted that she intentionally concealed information about her drug abuse history when she completed her 2000 SCA and during an initial interview in May 2001.

In addition, although she previously admitted that she asked her former husband to lie about her drug history, she denied having done so in her 2004 Answer.

I reviewed all of the mitigating conditions under this guideline, especially, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.3.2. (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), and concluded it does not apply. Applicant falsely answered a question in the 2000 SCA, in a subsequent 2001 interview, and in her 2004 Answer because she knew the disclosure would jeopardize her job. Accordingly, Applicant has not mitigated the security concerns based on personal conduct.

Guideline F: Financial Considerations

The Government also established a case under Guideline F, specifically, Financial Consideration Disqualifying Condition (FC DC) E2.A.6.1.2.1. (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*). Applicant's history of delinquent debt and an inability to manage that debt began in 1998 and continued to 2004, as reflected in a credit report and by her own admission.

In deciding this case, I considered all of the mitigating conditions under Guideline F, and concluded that Financial Consideration Mitigating Condition E2.A6.1.3.3. (*The condition that resulted in the behavior were largely beyond a person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*) applies. Applicant provided evidence that her financial problems began when her former husband stopped paying child support in 1998. Nevertheless, this mitigating condition is not sufficient to overcome the Government's concerns. Her problems have been ongoing for at least six years. They are not isolated incidents and there is not enough evidence to indicate that they have been resolved. There is no documentation in the record to show that Applicant has taken steps to financially rehabilitate herself, such as, proof that the alleged debts were discharged in bankruptcy, participation in credit counseling, or a current budget that balances income and expenses, taking into account the absence of previous debt. Accordingly, Applicant did not mitigate the security concerns raised by her financial situation.

I considered all of the evidence in this case, including Applicant's age, work history and role as a single mother. However, all of those factors are insufficient to mitigate her intention to conceal information throughout this application process, which raise serious concerns about her trustworthiness. Therefore, I am persuaded by the totality of the evidence that it is not consistent with the national interest to grant Applicant a security clearance.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline H (Drug Involvement) AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Paragraph 2: Guideline E (Personal Conduct) AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Paragraph 3: Guideline F (Financial Considerations) AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: Against the Applicant

Subparagraph 3.c.: Against the Applicant

Subparagraph 3.d.: Against the Applicant

Subparagraph 3.e.: Against the Applicant

Subparagraph 3.f.: Against the Applicant

Subparagraph 3.g.: Against the Applicant

Subparagraph 3.h.: Against the Applicant

Subparagraph 3.i.: Against the Applicant

Subparagraph 3.j. : Against the Applicant

Subparagraph 3.k.: Against the Applicant

DECISION

In light of all of 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.

Shari Dam

Administrative Judge

1. The Government submitted nine items in support of its case.
2. Item 1 (Security Clearance Application, dated September 1, 2000) at 1.
3. Item 8 (Statement of Applicant, dated August 8, 2001) at 2.

4. *Id.* at 3.
5. Item 8, *supra* note 3, at 2.
6. *Id.* at 4.
7. Item 3 (Applicant's Answer undated) at 1.
8. *Id.* at 5.
9. Item 5 (Credit Report, dated March 3, 2004).
10. Item 3, *supra* note 7, at 4.
11. Directive, Enclosure 2, ¶ E2.2.2.
12. Executive Order 10865, § 7.
13. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
14. ISCR Case No. 95-0611 at 3 (App. Bd., May 2, 1996).
15. ISCR Case No. 01-20700 at 3 (App. Bd., Dec. 19, 2002); *See* Directive ¶ E3.1.15.
16. *Id.*