

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant works for a defense contractor as a painter and sandblaster in a shipyard. When Applicant was about 18 or 19 years old, she experimented with marijuana, but has not used it since. When she was 24 years old, she wrongfully purchased alcohol for minors, resulting in a conviction. Applicant mitigated the security concerns arising from this conduct because the offenses were minor and have not recurred. Applicant wrongfully denied using marijuana on her security clearance application in 2002. Since then, she has matured. She has held a position of responsibility for over three years. She recognizes the importance of being completely candid in matters regarding security clearances and is unlikely to commit further misconduct. Clearance is granted.

CASENO: 03-22819.h1

DATE: 08/31/2005

DATE: August 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22819

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant works for a defense contractor as a painter and sandblaster in a shipyard. When Applicant was about 18 or 19 years old, she experimented with marijuana, but has not used it since. When she was 24 years old, she wrongfully purchased alcohol for minors, resulting in a conviction. Applicant mitigated the security concerns arising from this conduct because the offenses were minor and have not recurred. Applicant wrongfully denied using marijuana on her security clearance application in 2002. Since then, she has matured. She has held a position of responsibility for over three years. She recognizes the importance of being completely candid in matters regarding security clearances and is unlikely to commit further misconduct. Clearance is granted.

STATEMENT OF THE CASE

On September 9, 2002, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On November 29, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline E, Personal Conduct, and Guideline J, Criminal Conduct.

Applicant answered the SOR in writing on December 14, 2004. She elected to have a hearing before an administrative judge.

The case was assigned to me on February 24, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on March 29, 2005. The government introduced Exhibits 1 through 6. Applicant testified on her own behalf. DOHA received the final transcript of the hearing (Tr.) on April 12, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations in ¶¶ 1.a(1), and 2.b of the SOR. Applicant's Answer to SOR, dated December 14, 2004. Those admissions are incorporated herein as findings of fact. She denied the allegations in ¶¶ 1.a and 2.a of the SOR. Tr. at 10, 14. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 27 years old. Ex. 1 at 1. She works as a sandblaster and painter in a shipyard for a defense contractor. Tr. at 43.

Applicant indicated she was raised under difficult circumstances. Tr. at 41. In 1996, while a senior in high school, she became pregnant, got married, graduated from high school, and had a son. Tr. at 35, 37. She stayed at home to care for her child for about two years, then began working as a sales associate in 1998. Ex. 1 at 3. Applicant later worked as a landscaper and a member of the fire watch team at a shipyard. Between about 1997 and 1999, Applicant experimented with marijuana on a few occasions at small, private gatherings. Ex. 3 at 2; Tr. at 37-38.

Applicant separated from her husband in 1998, and they were divorced in March 2000. Ex. 3 at 2. The divorce was not amicable-in an effort to win custody of their son, Applicant's husband alleged that she unlawfully used marijuana and abused alcohol. Tr. at 22. Applicant voluntarily submitted to weekly drug testing to prove she did not use drugs, and was awarded custody of her son. Ex. 3 at 3; Tr. at 23, 38-39. Applicant married for the second time in 2000. Ex. 1 at 4.

In 2001, Applicant started her own housekeeping business, however the enterprise foundered in 2002. Ex. 1 at 3; Ex. 3 at 4. She separated from her second husband in June 2002. Ex. 3 at 3.

In July 2002, when Applicant was 24 years old, she attended a city street festival and consumed about four or five beers. Ex. 2 at 1. Outside a convenience store, two minors approached her, told her the store would not sell them beer because they were under 21 years old, and asked her to buy two beers for them. Applicant bought the beer and gave it to the minors. The minors were actually working with the local police on what they considered an "undercover operation," and immediately reported the incident. Ex. 2 at 2. When confronted by the police, Applicant admitted purchasing the alcohol for the individuals, but claimed she did not know they were minors. Ex. 4 at 3.

The police issued Applicant a citation for contributing to the delinquency of minors, requiring Applicant to appear in municipal court on a certain date. Ex. 2 at 2. Applicant failed to appear; she claimed she misplaced the citation during her move incident to her separation and divorce. Tr. at 28. The court issued a bench warrant for her arrest. Ex. 5 at 1. Applicant contacted the court, quashed the bench warrant, and arranged a new court date in November 2002. Ex. 2 at 2. Applicant missed the second court date. *Id.*

Applicant began working for her current employer in August 2002. *Id.* at 2. She submitted an SF 86, Security Clearance Application, on September 9, 2002. *Id.* at 1. The application asked about pending charges, and Applicant properly reported the citation for contributing to the delinquency of a minor. *Id.* at 8. Question 27 on the SF 86 asked whether Applicant had illegally used drugs, including marijuana, since she was 16 years old or within the last seven years, whichever was shorter. *Id.* at 9. Applicant answered, "No." *Id.*

In December 2002, a security investigator questioned Applicant about the pending charge. Ex. 2 at 1. Applicant indicated she would return to court and resolve the outstanding bench warrant. *Id.* at 2. The court lifted the warrant, accepted Applicant's guilty plea, and sentenced her to 365 days confinement (suspended) and a \$5,000.00 fine (\$4,900.00 suspended). Ex. 5 at 7. Applicant also paid fees and costs for failing to appear. *Id.*

In March 2003, the security investigator questioned Applicant about her drug use. Ex. 3 at 2. Applicant admitted that she experimented with marijuana on a few occasions in social settings. *Id.* at 3-4. She also wrote, "I falsified my EPSQ by not listing my use of marijuana on that form because I did not want to look like a druggie when I felt that my use of marijuana was insignificant." *Id.* at 3.

Applicant's employer has a drug-free workplace policy. Tr. at 46. Applicant is subject to random drug testing at any time. *Id.* She has been tested under the program; the results were negative. *Id.*

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline E, Personal Conduct. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive, ¶ E2.A5.1.1.

Guideline J, Criminal Conduct. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive, ¶ E2.A10.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline E, Personal Conduct

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Paragraph E2.A5.1.2.1 provides that "[r]eliable, unfavorable information" tending to show questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, may indicate that the person may not properly safeguard classified information. Applicant's wrongfully use of marijuana tends to show questionable judgment, unreliability, and a lack of trustworthiness. I find this potentially disqualifying condition applies.

Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. Paragraph 1.a of the SOR alleges Applicant deliberately failed to report her use of marijuana in response to question 27 on her security clearance application completed in September 2002. Applicant's assertion that she understood the question to ask whether she was a drug user is unpersuasive. Applicant had knowingly used an illegal drug on multiple occasions. The fact of that use had become a legal issue in her child custody struggle, and she submitted to a testing regimen to persuade the court to grant her custody of her child. Therefore, Applicant would have been especially attuned to this question. The language of the question is clear and straightforward. I find Applicant deliberately falsified her answer to question 27 of the security clearance application. I conclude this potentially disqualifying condition applies.

Under the Directive, an applicant may mitigate the security concerns arising from questionable personal conduct under certain circumstances. Directive, ¶ E2.A5.1.3. Under ¶ E2.A5.1.3.1, it may be mitigating where "[t]he information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability." Applicant's wrongful use of marijuana is substantiated by her own admissions. Her marijuana use and the falsification of her security clearance application are pertinent to a determination of her judgment, trustworthiness, and reliability. I find this mitigating factor does not apply.

Paragraph E2.A5.1.3.2 of the Directive arises where "the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily." The security clearance application in issue was executed in September 2002, however, it is the application presently before us, therefore it was recent. Applicant has not met her burden of demonstrating that this falsification was an isolated incident or that she subsequently provided correct information voluntarily. I conclude this potentially mitigating condition does not apply.

Under the Directive, it may be mitigating where, "[t]he individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts." Applicant has not met her burden of proving that she made good-faith efforts to correct the omissions in her security clearance application, or that her efforts were prompt. I find this potentially mitigating condition does not apply. I also considered carefully the other potentially mitigating conditions and conclude they do not apply.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. Applicant's use of marijuana occurred when she was very young, and is most accurately characterized as experimentation. Since then, she submitted to regular drug testing for a period and is subject to random drug tests at work. She recognizes the seriousness of the conduct and has resolved not to engage in such behavior in the future. I conclude Applicant has mitigated the security concerns arising from her personal conduct regarding drug abuse.

Applicant's falsification of her security clearance is a more serious concern. At the time of the incident, Applicant was a young, single parent facing many pressures. Since that time, she has matured and held a position of responsibility for over three years. She recognizes how important it is to be completely candid in matters relating to her security clearance. Considering all the evidence, including her demeanor at the hearing, I conclude Applicant has changed her behavior so that there is little likelihood of recurrence. I conclude Applicant has mitigated the security concerns arising from her falsification of her security clearance application.

Guideline J, Criminal Conduct

Under the Directive, ¶ E2.A10.1.2.1, "admission of criminal conduct" may be disqualifying. Similarly, under ¶ E2.A10.1.2.2 of the Directive, it may be disqualifying where an applicant committed "a single serious crime or multiple lesser offenses." Applicant admitted providing alcohol to minors and was convicted of the offense. She also falsified her security clearance application by providing an incorrect response to question 27, although it appears she did not appreciate the significance of the omission at the time. I conclude these disqualifying conditions apply.

Under the Directive, the security concerns arising from a history of criminal conduct may be mitigated in certain circumstances. Under ¶ E2.A10.1.3.1 of the Directive, it may be mitigating when "the criminal behavior was not recent." Applicant's falsification of her security clearance application and the purchase of alcohol for minors occurred in 2002. I conclude this conduct is recent, therefore this potentially mitigating condition does not apply.

The Directive, ¶ E2.A10.1.3.2, also provides that it may be mitigating where "the crime was an isolated incident." Applicant's purchase of alcohol for minors was a unique offense; she was 24 years old, had consumed several drinks, and was targeted by the police informants. I find it was an isolated incident. However, with regard to the falsification of the security clearance application, Applicant has not met her burden of demonstrating that it was an isolated event. I note that, when stopped for buying beer for minors, she was not completely candid with the police officers about

whether she knew the individuals were under age. I conclude this mitigating condition does not apply to the falsification offense.

Under, ¶ E2.A10.1.3.6 of the Directive, it may be mitigating where "there is clear evidence of successful rehabilitation." Applicant's offenses occurred when she was 24 years old; since then she has assumed greater responsibilities and held steady employment at the shipyard. She now recognizes the mistakes she made, and is resolved not to offend in the future. I considered carefully her demeanor during the hearing and find that she has matured and is unlikely to commit criminal acts in the future. I conclude this mitigating factor applies.

I carefully considered the disqualifying and mitigating conditions in this case, in light of the "whole person" concept. Providing alcohol to individuals under 21 years is very minor offense, and the circumstances under which it occurred make it clear it does not create a security concern. The falsification offense is more serious, because the security clearance system relies heavily on the candor of applicants in determining suitability. At the time of the offenses Applicant was only 24 years old, and a single parent faced with the pressures of supporting herself and her child alone. Since then, Applicant has matured and accepted greater responsibilities. I find the potential for pressure, coercion, exploitation, or duress as a result of this conduct is minimal. Balancing the disqualifying and mitigating factors in light of the "whole person" concept, I conclude Applicant has mitigated the security concerns arising from her history of criminal conduct.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline E: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.a(1): For Applicant

Paragraph 2, Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.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.

Michael J. Breslin

Administrative Judge