

DATE: March 14, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23883

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a long history of drug abuse. She failed to accurately record that history in her security clearance application or in a statement she made to a Defense Security Service agent investigating her security worthiness. Applicant has delinquent debts totaling more than \$9,300. Applicant failed to mitigate security concerns raised because of her drug involvement, her financial condition, and her personal conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 8 June 2004, DOHA issued a Statement of Reasons ⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement), Guideline E (Personal Conduct), Guideline F (Financial Considerations), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 29 June 2004 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 21 October 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 8 November 2004 and responded on 8 December 2004. The case was originally assigned to another judge, but was reassigned to me on 17 February 2005.

FINDINGS OF FACT

Applicant is a 41-year-old employee of a defense contractor. She has been illegally involved with controlled substances since at least 1978. Applicant used marijuana from 1978 until at least December 1999. Answer. She was arrested for possession of marijuana in 1982. Item 5 at 1. She used LSD (lysergic acid diethylamide) on more than one occasion between 1978 and 1980. She used hallucinogenic mushrooms on one occasion in 1979. Answer. Applicant used PCP, at times twice weekly, from 1978-79. She also illegally used peyote and the prescription drug Valium in 1979. Answer. Applicant used cocaine from 1978 until at least July 1998. She used methamphetamine from 1982 until at least 2001. Answer.

On 15 July 1998, Applicant was arrested and charged with conspiracy to manufacture methamphetamine, maintaining a place for manufacturing, distributing, and using a controlled substance, manufacturing methamphetamine, possession of methamphetamine with the intent to distribute, possession of pseudoephedrine with intent to manufacture methamphetamine, and possession of listed chemicals with the intent to manufacture methamphetamine. Applicant pled guilty to maintaining a place of manufacturing, distributing, and using a controlled substance. She was sentenced to 36 months of supervised probation, participation in a home confinement program with electronic monitoring for six months, fined \$1,000, and required to perform 200 hours of community service and complete substance abuse treatment. Applicant attended an outpatient substance abuse treatment program from November 1999 to February 2000 and was diagnosed with methamphetamine dependence in remission. Answer.

Although Applicant asserts she has not illegally used controlled substances since 2001, she has not escaped the drug culture. In April or May 2003, her 17-year-old ward ran away from her home and became involved in methamphetamine. He tested positive for use of methamphetamine and she found some of the drug in his coat pocket. In July or August 2003, she was driving her sister's car when a passenger found crack cocaine in the vehicle. Applicant flushed the cocaine down a toilet.

Applicant executed a security clearance application (SCA) on 25 April 2001. Item 4 at 10. She certified that all the statements in the SCA were "true, complete, and correct." Question 27 asked if, in the previous seven years, Applicant had illegally used any controlled substances. Applicant answered affirmatively and listed only methamphetamine and marijuana use three times a week between August 1994 and July 1998.

Applicant was interviewed by a Defense Security Service agent on 13 May, 11 June, and 25 July 2003. During these interviews, Applicant deliberately omitted information about her drug use. She started using methamphetamine as early as 1981 and injected herself with methamphetamine as late as 2001. She started smoking marijuana when she was 15 years old (1978 or 1979) and last used it in 1999. She also failed to acknowledge her use of heroin, cocaine, and PCP.

Applicant has had problems meeting her financial obligations. Two judgments, one in 1998 for \$458 and another in 1999 for \$6,161, were entered against Applicant. She had not satisfied those judgments by the time the SOR was issued. She has since paid the \$458 judgment. She had three delinquent debts totaling more than \$1,400 that were placed for collection. She had two delinquent debts totaling over \$1,000 that were charged off. Applicant asserts she is only a few payments away from clearing up one of these debts. Although she is making some progress on her debts, Applicant still has a debt that, with accumulated interest, now totals more than \$9,300.

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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline H-Drug Involvement

In the SOR, DOHA alleged Applicant was convicted of maintaining a place for manufacturing, distributing, and using a controlled substance (¶ 1.a), was diagnosed with methamphetamine dependence in remission (¶ 1.b), used methamphetamine from 1982 until at least 2001 (¶ 1.c), used marijuana from 1978 until at least December 1999 (¶ 1.d), used cocaine from about 1978 until at least 1998 (¶ 1.e), used heroin in 1979 (¶ 1.f), used LSD between 1978 and 1980 (¶ 1.g), used hallucinogenic mushrooms in 1979 (¶ 1.h), used peyote in 1979 (¶ 1.i), used PCP from 1978-79 (¶ 1.j), and illegally used Valium in 1979 (¶ 1.k). Applicant admits each of the allegations, except that in ¶ 1.e. (2) The improper or illegal involvement with drugs raises questions regarding an applicant'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. Directive ¶ E2.A8.1.1.

The evidence established Applicant abused drugs. DC E2.A8.1.2.1. She was conspired to maintain a place for illegal drug possession, manufacture, and distribution. DC E2.A8.1.2.2. Applicant was diagnosed with methamphetamine dependence, but as there is no evidence the diagnosis was by a credentialed medical professional or licensed clinical social worker, DC E2.A8.1.2.3 and E2.A8.1.2.4 do not apply. Applicant's last reported drug use was not recent-it was almost four years ago. MC E2.1.3.1. But her claims of abstinence are suspect in light of her several attempts to mislead the Government, in her SCA and in interviews with DSS agents, about her past drug use. Although she claims she does not intend to use drugs in the future, she admits she might under certain circumstances. And Applicant has close relationships with persons involved in drug abuse-her ward is involved with methamphetamine and her sister's boyfriend is involved with cocaine. It is not an environment conducive to abstinence for one who has been diagnosed as methamphetamine dependent to remain abstinent. I find against Applicant on ¶ 1.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on her SCA by deliberately failing to note she had used cocaine and failed to reveal the full extent of her use of marijuana and methamphetamine (¶ 2.a) and deliberately falsified material facts during three interviews with a DSS agent by claiming she had not used illegal drugs since 1998 (¶ 2.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 established through Applicant's own admissions that she deliberately failed to disclose the full nature of her drug abuse in both her SCA and in statements she made to a DSS agent. The deliberate falsification of relevant and material facts in an SCA (DC E2.A5.1.2.2) and in statements given to security investigators (DC E2.A5.1.2.3) raise security concerns that may be disqualifying. The full nature of an applicant's drug abuse is relevant and material to a determination of her security worthiness. If she has finally revealed the full nature of her drug abuse, such positive steps could significantly reduce her vulnerability to coercion or exploitation. MC E2.A5.1.3.5. Nevertheless after full consideration of all the evidence, I find against Applicant on ¶ 2. She did not establish that she is reliable and trustworthy.

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had two judgments entered against her (¶¶ 3.a, 3.g), three bad debts that were placed for collection (¶¶ 3.b, 3.c, 3.e), and two bad debts that were charged off (¶¶ 3.d, 3.f). Applicant admitted each of the allegations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established Applicant has a history of not meeting her financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy her debts (DC E2.A6.1.2.3). Although Applicant appears to be making some progress on her debts through a good-faith effort to repay her creditors (MC E2.A6.1.3.6), she still has one of more than \$9,300 about which she has done little or nothing to resolve. Under all the circumstances, I conclude Applicant failed to mitigate this security concern.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was convicted of maintaining a place for manufacturing, distributing, and using a controlled substance (¶ 4.a). Applicant admitted the allegation. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.

The Government established through its evidence and Applicant's admissions that she was convicted of a serious crime in 1998. DC E2.A10.1.2.2. An applicant may mitigate a criminal conduct security concern if she can show the "criminal behavior was not recent." MC E2.A10.1.3.1. It is not clear whether "criminal behavior" is restricted to consideration of the conduct alleged in the SOR or to the applicant's entire criminal history. Although not charged, her illegal use of controlled substances was also criminal activity that lasted until at least 2001. Nevertheless, after considering all of the evidence, I conclude that her criminal behavior was not recent. I find for Applicant on ¶ 4.

FORMAL FINDINGS

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

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Paragraph 3. Guideline F: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Subparagraph 3.d: Against Applicant

Subparagraph 3.e: Against Applicant

Subparagraph 3.f: Against Applicant

Subparagraph 3.g: Against Applicant

Paragraph 4. Guideline J: FOR APPLICANT

Subparagraph 4.a: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 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 (Directive).
2. Applicant actually denied only the frequency with which it was alleged she used cocaine, not the fact she used it.