

DATE: December 27, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24407

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns raised by her criminal conduct--several arrests for assault and battery--and her personal conduct--deliberately falsifying her security clearance application by failing to list all of her arrests and her use of marijuana. 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 9 June 2004, DOHA issued a Statement of Reasons ⁽¹⁾ (SOR) detailing the basis for its decision--security concerns raised under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 9 August 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 7 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 5 November 2004, but did not respond. The case was assigned to me on 20 December 2004.

In its FORM, the Government moved to amend the allegations in each of the subparagraphs in ¶ 2 by substituting the words "Questionnaire for National Security" for "Security Clearance Application." Applicant failed to object. The motion is granted.

FINDINGS OF FACT

Applicant is a 24-year-old security guard for a defense contractor.

In September 1996, Applicant was arrested and charged with aggravated assault (a felony) for brandishing a knife in a threatening manner at an individual who was involved in an altercation with her brother. Item 7 at 33. In November

1996, Applicant was arrested and charged with aggravated battery, a felony, for stabbing a woman several times with a screw driver. When questioned by police, Applicant denied involvement in these offenses. *Id.* at 34. In March 1997, Applicant entered a plea of nolo contendere to the offense of simple battery. The court found her guilty and adjudicated her as a delinquent. *Id.* at 23. The state terminated supervision of Applicant on 29 September 1997. *Id.* at 32.

In July 1999, Applicant was charged with assault and battery of a family member--her boyfriend. In March 2000, the charges were dismissed. In May 2000, Applicant was charged with assault and battery of a family member. The offense was nolle prossed in July 2000.

In May 2001, Applicant was arrested and charged with assault and battery for throwing the telephone at her mother and hitting her with it. In December 2001, Applicant was arrested and charged with violating a court order to attend anger management classes and report to a probation officer.

Applicant used marijuana from about 1994 until at least March 2000. Item 5 at 3.

On 20 November 2002, Applicant completed a security clearance application (SCA) in which she certified that her answers were "true, complete, and correct" to the best of her knowledge and belief and acknowledged understanding that knowing and willful false statements therein could be prosecuted under 18 U.S.C. § 1001. Question 23(a) asked if she had ever been charged with or convicted of any felony offense. Applicant answered "no." Question 23(f) asked if, in the previous seven years, Applicant had been arrested for or charged with other offenses not listed elsewhere. Applicant answered "yes," and listed a conviction in January 2002 for assault. Question 24(a) asked if, since the age of 16 or in the last 7 years, whichever is shorter, Applicant had illegally used controlled substances such as marijuana. Applicant answered, "no."

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 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.

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. May 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 J--Criminal Conduct

In the SOR, DOHA alleged Applicant was charged with violation of a court order on 14 December 2001 (¶ 1.a), arrested for assault and battery in May 2001 (¶ 1.b), charged with assault and battery on a family member in May 2000 (¶ 1.c), charged with assault and battery on a family member in March 2000 (¶ 1.d), charged with aggravated assault on 22 November 1996 (¶ 1.e), and charged with aggravated assault, a felony, on 22 September 1996 (¶ 1.f). A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government's evidence and Applicant's admissions constitute substantial evidence of potentially disqualifying conditions under Guideline J. Applicant committed serious offenses--aggravated assault by brandishing a knife in a threatening manner and aggravated battery by stabbing another woman several times in the upper body with a screw driver--and multiple lesser offenses by assaulting her mother with the telephone, assaulting her boyfriend, and failing to comply with a court order to attend anger management classes and meet with a probation officer. DC E2.A10.1.2.2. None of the mitigating conditions apply. Applicant's most recent alleged criminal conduct is her arrest in December 2001. Considering the length of her criminal history and the fact that she violated 18 U.S.C. § 1001 by knowingly and willfully falsifying her SCA, I am unable to find her criminal behavior was not recent. *See* MC E2.A10.1.3.1. I find against Applicant on ¶ 1.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on her SCA by failing to list being charged with felony offenses in 1996 and 1997 (¶ 2.a), failed to acknowledge the offenses listed in ¶¶ 1.a-1.d (¶ 2.b), and failed to list her use of marijuana (¶ 2.c).⁽²⁾ 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 by substantial evidence that Applicant failed to fully disclose her felony offenses, other criminal offenses, and drug use. An applicant's criminal conduct and drug use are material to a determination of an applicant's security worthiness. Applicant claims she did not deliberately falsify her SCA, but made mistakes because she was "multitasking" or misunderstood the question. After considering all the evidence, I conclude Applicant deliberately falsified her SCA. DC E2.A5.1.2.2. None of the listed mitigating conditions apply. I find against Applicant on ¶ 2.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against 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. The allegations in the SOR assert Applicant falsified material facts on questions 21, 26, and 27. The evidence in the FORM supports a finding that the questions were 23(a), 23(f), and 24(a). As Applicant made no objection to this administrative error and admitted incorrectly answering these questions, I conclude the error was harmless.