

KEYWORD: Criminal Conduct

DIGEST: Applicant's isolated criminal activity occurred over four years ago and was motivated by a desire to protect her small children from harm. She has taken responsibility for her actions, and is unlikely to engage in criminal conduct in the future. Clearance is granted.

CASENO: 03-25118.h1

DATE: 07/20/2005

DATE: July 20, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25118

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's isolated criminal activity occurred over four years ago and was motivated by a desire to protect her small children from harm. She has taken responsibility for her actions, and is unlikely to engage in criminal conduct in the future. Clearance is granted.

STATEMENT OF THE CASE

On December 30, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on January 14, 2005. The case was assigned to me on March 25, 2005. A Notice of Hearing was issued on June 8, 2005, and the hearing was held on July 6, 2005. The transcript was received on July 19, 2005.

FINDINGS OF FACT

Applicant is 53 years of age.

Applicant and her former husband were married in January 1997. Applicant gave birth to triplets in December 1998. The triplets were premature, and one of them did not survive more than a couple of days. Applicant's former spouse filed for divorce in April 2000. They continued to live in the same house until June 2000. At the time they separated in June 2000, they had a court hearing at which time the Court in State A awarded joint custody of the two surviving children.

Applicant became concerned about the care the two children were receiving while in the custody of the father. Part of the concern was based on the fact that the husband, without applicant's knowledge, had told the doctors after the triplets were born not to resuscitate the child (who eventually died) if his breathing difficulties persisted (Exhibit E). These concerns became acute when she learned that the father had scheduled surgery for the children. In November 2000, shortly after being advised by a doctor that the planned surgery was not necessary (Exhibit H), she took the children and moved to a different State (State B). In February 2001, she was located in State B. She was arrested and the children were placed in State B's custody until the father picked them up. After spending time in a State B jail, applicant was allowed to return by herself to State A to face charges.

In April 2001, applicant was charged with two felony counts of Violation of a Custody Decree. She subsequently failed to appear for a court hearing and a bench warrant was issued. Applicant was arrested and eventually spent about nine months in custody awaiting trial. In September 2002, she pleaded nolo contendere to one count of Violation of a Custody Decree and the second count was dismissed. She was sentenced to 324 days in jail (which equaled the credit she received for time served and good behavior), ordered to pay \$200.00 in restitution, and was placed on probation for three years. In March 2003, the Court granted applicant's request to have the crime she was convicted of reduced to a misdemeanor. In October 2003, the Court terminated applicant's probation, set aside her conviction, entered a not guilty plea for her, and then dismissed the case.

In a Supplemental Probation Report dated March 2002 (Exhibit 10), it is noted that applicant had attended ten counseling sessions, and that her counselor had indicated applicant is "making progress and accepting responsibility for her own actions."

At the present time, applicant and her former husband are still battling in court over custody of the two children.

CONCLUSIONS

The evidence establishes that in late 2000, applicant knowingly violated a custody decree issued by a Court. By doing so she committed a felony; namely, Violation of a Custody Decree. This conduct reflects adversely on her judgment and reliability, and requires application of Disqualifying Condition E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*).

Based on the evidence presented, I am convinced that applicant violated the custody decree and took her children to State B because she was scared to death of what may happen to them if they underwent the surgery the husband was planning. Although this does not excuse her conduct, the fact her illegal activity was motivated by her desire to protect her children is a mitigating factor.

Applicant paid a stiff price for her illegal activity. In addition to the long time she spent in jail, her visits with her children are now limited to two hours a week. To her credit, she has taken responsibility for her actions, complied with all subsequent Court orders, and has come to the realization that violating a Court's order is not a proper course of action. I conclude that there is little chance applicant will engage in any further criminal conduct. She qualifies for Mitigating Conditions E2.A10.1.3.1 (*the criminal behavior was not recent*), E2.A10.1.3.2 (*the crime was an isolated incident*), E2.A10.1.3.4 (*the factors leading to the violation are not likely to recur*) and E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*). Based on the foregoing, Guideline J is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

DECISION

In light of all 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.

Joseph Testan
Administrative Judge