

DATE: June 10, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 03-00476

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has mitigated alcohol abuse and criminal conduct, including a DUI that she committed six years ago and two 25-year-old marijuana offenses. However, Applicant has not mitigated the deliberate omission from her security clearance application of a non-judicial punishment for dereliction of duty she received a year before she retired from the military and has failed to sufficiently explain her omission of the marijuana offenses. Applicant also has failed to support her claim she is the victim of identity theft with respect to four delinquent debts in her financial history. Clearance is denied.

STATEMENT OF THE CASE

On August 18, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge.

On October 8, 2003, DOHA received Applicant's response to the SOR, in which she requested a hearing. The case was assigned to me on December 22, 2003. A notice of hearing was issued on January 8, 2004 and the hearing was held on January 29, 2004. During the hearing, 10 Government exhibits (Govt Ex) and the testimony of Applicant were received. The transcript (Tr) was received on February 6, 2004.

PROCEDURAL ISSUES

Prior to the receiving evidence, Department Counsel submitted a motion to amend the SOR in the interest of justice and in order to allow the SOR to conform to the evidence. In accordance with E3.1.17 of the Directive, I denied the motion.

Without objection by Department Counsel, I granted Applicant an additional 29 days in which to submit corroborating evidence of identity theft and character references. Applicant made no submission.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 45-year-old executive secretary employed by a defense contractor. She is seeking a security clearance.

On October 6, 1975, Applicant was convicted of larceny, a misdemeanor, and ordered to pay a fine and costs of approximately \$80.00 (SOR ¶ 2.e).

Applicant served in the United States Navy from October 1978 until her retirement in October 1998.

While a member of the Navy, Applicant received non-judicial punishment for possession of marijuana on two occasions in 1979 (SOR ¶ 2.d).⁽³⁾

On August 21, 1980, Applicant received a written warning that further misconduct involving illegal drugs might result in her administrative discharge from the Navy (SOR ¶ 2.c).

In July 1985, Applicant was identified as an alcohol and entered an alcohol rehabilitation program. She completed the program in September 1985 (SOR ¶ 1.c).

Following completion of the alcohol rehabilitation program, Applicant took Antabuse for the treatment of her alcoholism (SOR ¶ 1.d).

On April 24, 1986, Applicant submitted a personnel security questionnaire (DD Form 398). She reported both her use of marijuana and being subject to a "bust" on two occasions for such use.

On March 2, 1993, Applicant submitted a DD Form 398. She reported both her use of marijuana from 1974 until 1979 and two non-judicial punishments for such use in 1979.

In 1997, Applicant received a non-judicial punishment for dereliction of duty that included a reprimand and one month's forfeiture of her pay. A year earlier, she had requested reassignment to the field because of the trauma she experienced following the suicide of the admiral on whose staff she served. However, Applicant was unable to perform the work expected of her following reassignment, because she had been serving in a specialized field as an executive secretary for 12 years.

On April 25, 1998, Applicant was charged with Driving Under the Influence (DUI), after she collided with a sign and damaged her automobile beyond repair. On September 28, 1998, she was convicted of the offense. Applicant received a suspended sentence of 30 days in jail, was fined approximately \$300.00, had her driver's license suspended for one year, with the exception of driving to and from work, and was ordered to complete an alcohol safety program (SOR ¶ 1.b).

Although Applicant continues to drink alcohol, she never drives while doing so. The only alcoholic beverage Applicant consumes is beer. She normally consumes between two and four beers on weekends while watching a NASCAR race or football on television (SOR ¶ 1.a).

Since her retirement from the Navy, Applicant was unemployed from October 30, 1998 until December 1, 1998; from April 1, 1999 until June 1, 1999; and from August 1, 2000 until February 11, 2001.

Applicant's credit record includes four delinquent debts: two with major department stores, in amounts of \$2370.00 and \$605.00; one to another creditor in the amount of \$415.00; and one to a town in the amount of \$46.00. With regard to the \$605.00 debt, there are multiple entries of that creditor in Applicant's credit record, reflecting an account was opened as early as 1995. The other accounts appear to have been opened or the charge incurred in 2001. With regard to the \$605.00 debt, Applicant made a verbal complaint of fraud to the creditor in August 2002. However, she but did not

submit the Statement of Unauthorized Use that was sent to her by the creditor. Therefore, the creditor re-billed the \$605.00 charge to her account. (SOR ¶ 3.a through SOR ¶ 3.d).

On July 9, 2002, Applicant executed a security clearance application (SF 86). In response to question 24, ⁽⁴⁾ Applicant answered, "yes," and reported her DUI conviction in 1998. However, she failed to report her two non-judicial punishments for marijuana use in 1979 (SOR ¶ 4.a).

In response to question 25-⁽⁵⁾ on the same SF 86, Applicant answered, "no," and deliberately failed to report her non-judicial punishment for dereliction of duty in 1997 (SOR ¶ 4.b).

In response to question 37-⁽⁶⁾ on the same SF 86, Applicant answered, "no" (SOR ¶ 4.c).

On October 30, 2002, Applicant was interviewed by an investigator for the Defense Investigative Service (DIS). Applicant provided a sworn statement in which she discussed the DUI she reported on her SF 86 and her financial history. She did not address her omissions to questions 24 and 25 on her SF 86.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline G: Alcohol Consumption

The concern under Guideline G is that excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. Conditions that could raise a security concern and may be disqualifying under Guideline G include E2.A7.1.2.1, alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use (Disqualifying Condition 1). They also include

E2.A7.1.2.3, diagnosis of a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A7.1.3.2, the problem occurred a number of years ago and there is no indication of a recent problem (Mitigating Condition 2).

Guideline J: Criminal Conduct

The concern under Guideline J is a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. Conditions that could raise a security concern and may be disqualifying under Guideline J include E2.A10.1.2.1, allegations or admission of criminal conduct, regardless of whether the person was formally charged (Disqualifying Condition 1).

Conditions that could mitigate security concerns include E2.A10.1.3.1, the criminal behavior was not recent (Mitigating Condition 1). They also include E2.A10.1.3.6, there is clear evidence of successful rehabilitation (Mitigating Condition 6).

Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Guideline E: Personal Conduct

The concern under Guideline E is 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. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2) and E2.A5.1.2.4 (Disqualifying Condition 4). Disqualifying Condition 2 covers 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.

CONCLUSIONS

Guideline G: Alcohol Consumption

Applicant's DUI is the type of alcohol-related incident away from work addressed by Disqualifying Condition 1. Although her participation in an alcohol rehabilitation program and treatment with a prescribed substance in 1985 may have been pursuant to a diagnosis of alcohol abuse or alcohol dependence by a credentialed medical professional or evaluation by a licensed clinical social worker, thereby raising Disqualifying Condition 3 or Disqualifying Condition 4, the record fails to establish this. The record does not identify the source of any diagnosis or evaluation of her alcohol problem or under whose direction she took Antabuse.

To the extent that a disqualifying condition has been established by the record, Applicant has mitigated it. Following her completion of an alcohol rehabilitation program 19 years ago, there is no evidence of any alcohol-related incidents until the DUI in 1998. The DUI occurred over six years ago and there is no indication of a recent problem. Although Applicant continues to consume beer, there is no evidence that she drinks other than moderately and she testified that she never drinks and drives. Therefore, the record supports Mitigating Condition 2. Consequently, I find in favor of Applicant with regard to SOR ¶ 1.a through SOR ¶ 1.d.

Guideline J: Criminal Conduct

Applicant's larceny conviction in 1975, marijuana offenses in 1979, and DUI conviction in 1998 are evidence of criminal conduct. They support Disqualifying Condition 1.

As a teenager, Applicant committed the petty larceny 29 years ago and there is no evidence she repeated such conduct. Based on the record, Applicant has not used marijuana since her second non-judicial punishment in 1979. The record establishes that Applicant's only alcohol-related offense occurred over six years ago. She testified she no longer drinks

to excess and never drives after drinking and there is no evidence to the contrary. In accordance with Mitigating Condition 1 and Mitigating Condition 6, I find in favor of Applicant with regard to SOR ¶ 2.a, 2.c, 2.d, and 2.e.

The non-judicial punishment that Applicant received in 1997 for her inability to perform her job concerns conduct that is not considered criminal in the civilian world. Moreover, Applicant was properly performing the specialized position she had been in for 12 years. Although the Navy expected someone of her grade to perform the position to which she was transferred, this expectation appears questionable after Applicant's absence from that field for more than a decade. Moreover, Applicant would not have left a position she could perform for one she could not had it not been for the trauma she suffered as a result of her boss committing suicide. Given these mitigating and extenuating circumstances with regard to a purely military offense, I find in favor of Applicant with regard to SOR ¶ 2.b.

Guideline F: Financial Considerations

There are delinquent debts listed in Applicant's credit reports and four of them are addressed by SOR ¶ 3.a through SOR ¶ 3.d. They reflect both a history of not meeting financial obligations, as well as an inability or unwillingness to satisfy debts. This raises both Disqualifying Condition 1 and Disqualifying Condition 3.

Applicant categorically denies responsibility for all of the delinquent debts alleged by the Government that total \$3436.00. She asserts she did not open any of the accounts and that she is an identity theft victim. In October 2002, she told a DIS investigator that she understood from creditors the accounts were opened in 2001, using her former address. At the hearing, Applicant acknowledged she had not followed through with trying to have the debts removed from her credit record. Based on the record, Applicant had no history of financial issues up until her most recent security clearance application. Since her retirement from the Navy, however, Applicant has experienced periods of unemployed in which it may have been difficult for her to pay her debts. They include one month in 1998, two months in 1999, and six months in 2000-2001. Although she was receiving retirement pay from the Navy, her income would have been substantially reduced from her active duty pay. Although I granted Applicant four weeks subsequent to the hearing to submit corroborating evidence of an identity theft, including documentation of her efforts to resolve it, she did not make any submission. The absence of corroborating evidence with regard to her explanation of the indebtedness and her reluctance to provide the documentation to creditors necessary to remove them from her credit reports creates doubt as to whether she has been a victim of identity theft. In accordance with the Directive, I have resolved the doubt in favor of national security. I find against Applicant with regard to SOR ¶ 3.a through SOR ¶ 3.d.

Guideline E: Personal Conduct

The Government has failed to establish Applicant falsified her response to question 37 on the security clearance application by not listing an alleged judgment against her. The record fails to establish the delinquent debt in question has resulted in a judgment. Even if the debt has resulted in a judgment, there has been no showing that Applicant was aware of it when she completed her response to question 37. Applicant denies the debt is hers and asserts that it resulted from someone fraudulently incurring it in her name. Although doubt as to whether she did or did not incur the debt in question results in a finding against her under the Directive with regard to the debt itself, it does not afford a sufficient basis for determining that she deliberately falsified her SF 86 by not reporting it. Therefore, I find in favor of Applicant with regard to SOR ¶ 4.c.

Applicant admitted she deliberately omitted her 1997 non-judicial punishment for dereliction of duty from her SF 86 because she was very ashamed that she had failed to do her job. This establishes Disqualifying Condition 2 and is also evidence of Disqualifying Condition 4.

Applicant has failed to mitigate her falsification. The information she deliberately omitted is pertinent to a determination of reliability. Even if it is, as she says, the only thing she lied about, Applicant fail to disclose the falsification promptly, before she was confronted with it. The fact she did not report offense because she was ashamed or embarrassed does not mitigate the omission, since it is evidence of Disqualifying Condition 4. ISCR Case No. 99-0557 (July 10, 2000) at p. 3.

Applicant's explanation for the failure to report her marijuana offenses in response to question 24 was that she thought it was "part of the record," [\(7\)](#) having reported them on previous security clearance applications. The fact she previously

report the offenses does not relieve the Applicant of continuing to do so. Her explanation for failing to report the offenses finds no support in question 24, which is in no way limited to offenses other than those previously reported. However, her previous disclosures might make Applicant's explanation more tenable were it not for her admitted falsification in response to question 25. It raises doubt with respect to her explanation for providing an incomplete response to question 24. In accordance with E.2.2.2 of the Directive, such doubt must be resolved in favor of national security. Therefore, I find against Applicant with regard to SOR ¶4.a and 4.b.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For 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

Paragraph 4. Guideline E: AGAINST APPLICANT

Subparagraph 4.a: Against Applicant

Subparagraph 4.b: Against Applicant

Subparagraph 4.c: For Applicant

DECISION

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

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Although the SOR and Applicant's DD Form 398 in 1983 indicate the punishments were issued in August and September, her statement to a DIS agent in 1986 placed them in August and November of 1979.
4. "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?"
5. "In the last 7 years, have you been subject to court martial or other disciplinary proceedings under the Uniform Code of Military Justice?"
6. "In the last 7 years, have you had any judgments against you that have not been paid?"
7. Tr. 38.