

DATE: December 21, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01576

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a long history of financial difficulties, the majority of which have not been resolved. Additionally, Applicant's credibility is suspect since she knew or should have known that the information that she provided to the Government in a Security Clearance Application (SCA) in January 2002, regarding her usage of marijuana, especially while holding a security clearance, was materially incorrect and incomplete.. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On January 29, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 a clearance should be denied or revoked.

In a signed and sworn undated statement, Applicant responded to the SOR allegations. She requested that her case be decided on the written record in lieu of a hearing. On June 21, 2004, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response to the FORM. The case was assigned to this Administrative Judge on September 7, 2004.

Department Counsel offered 12 documentary exhibits (Exhibits 1-12), which have been admitted without objection. Applicant offered no documentary evidence into the record.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations), Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of the Directive. The SOR contains eight allegations, 1.a., through 1.h., under Guideline F, one allegation, 2.a., under Guideline H, and two allegations, 3.a. and 3.b., under Guideline E. Applicant admitted SOR allegations 1.a., 1.b., 1.d., e., 1.f., and 2.a., and she denied the other allegations. The admitted allegations are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the additional Findings of fact:

Applicant is 44 years old. She is employed as a Word Processor/Receptionist, by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector. She is married and has no children.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists eight allegations of overdue debts or other examples of financial difficulties and irresponsibility, 1.a. through 1.h, under Adjudicative Guideline F. These will be discussed in the order that they were listed in the SOR.

1.a. This overdue debt to the Internal Revenue Service (IRS) for unpaid federal taxes for tax year 1998 is in the amount of \$1,377.65 (Exhibit 5). In Exhibit 3, Applicant admitted that this debt is due and owing. I find that Applicant owes the entire amount stated.

1.b. This overdue debt to the Internal Revenue Service (IRS) for unpaid federal taxes for tax year 1999 is in the amount of \$2,513.98 (Exhibit 5). In Exhibit 3, Applicant admitted that this debt is due and owing. I find that Applicant owes the entire amount stated.

1.c. This allegation states that Applicant failed to file a Federal tax return for tax year 2000. In Exhibits 3 and 9, Applicant claimed that she did file a tax return for tax year 2000, but has offered no evidence to establish that she has done so. Regarding tax year 2000, Exhibit 5 shows "Return not present for this account." I cannot conclude that Applicant filed a tax return for tax year 2000.

1.d. This allegation states that Applicant failed to file a Federal tax return for tax year 2001. In Exhibit 9, Applicant admitted that she did not file a tax return for tax year 2001. However, in Exhibit 3, she claims that she has filed a return for 2001, but again she offered no evidence to establish that she has done so. Regarding tax year 2001, Exhibit 5 shows "Return not present for this account." I cannot conclude that Applicant filed a tax return for tax year 2001.

1.e. This overdue debt to Creditor 2 is listed in the SOR in the amount of \$50. Exhibits 6, 7, and 8 are credit reports that show this debt is overdue. In Exhibit 3, Applicant admitted that this debt is due and owing. I find that Applicant owes the entire amount stated.

1.f. This overdue debt, also to Creditor 2, is listed in the SOR in the amount of \$150. Exhibits 6, 7, and 8 show this debt is overdue. In Exhibit 3, Applicant admitted that this debt is due and owing. I find that Applicant owes the entire amount stated.

1.g. This overdue debt, also to Creditor 3, is listed in the SOR in the amount of \$86. Exhibits 6, 7, and 8 show this debt is overdue. In Exhibit 3, Applicant denied that this debt is due and owing. but again has offered no evidence to establish that fact. I find that Applicant owes the entire amount stated.

1.h. This overdue debt to Creditor 4, is listed in the SOR in the amount of \$1,950. Exhibits 6, 7, and 8 show this debt is overdue. In Exhibit 3, Applicant denied that this debt is due and owing, but again has offered no evidence to establish that fact. I find that Applicant owes the entire amount stated.

A signed, sworn statement, made by Applicant, reveals that she has had significant financial difficulties at least as far back as 1994 (Exhibit 10). Based on Applicant's Personal Financial Statement, completed on November 3, 2003, her monthly net remainder is approximately \$85. This amount is not sufficient for Applicant to resolve her current financial problems (Exhibit 6).

Paragraph 2 (Guideline H - Drug Involvement)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she abused illegal substances. Applicant admitted to using marijuana on one occasion in 1998, during a period when she held a security clearance. She has stated that she has no intention to use marijuana in the future (Exhibits 3 and 6). No evidence was presented to indicate that she used marijuana more than that one time or that she ever used any other illegal substance.

Paragraph 3 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she furnished untruthful information to the Government in two separate questions and responses when Applicant completed a signed, sworn Security Clearance Application (SCA) on January 17, 2001 (Exhibit 4).

Question #27 asks, "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance . . . ?" Applicant answered "No" to question #27. She did not provide any information regarding her marijuana usage in 1998.

Question #28 asks, "Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance . . . ?" Applicant answered "No" to question #27. She failed to provide the information that she used marijuana during the period in which she possessed a security clearance, which was granted to her in 1994.

Applicant clearly was not honest with the information that she furnished to the Government on January 17, 2001. In a response to interrogatories, dated November 3, 2003, Applicant stated, "When I answered the questionnaire electronically I had completely forgotten about that one occurrence. In talking to the Agent(of the Defense Security Service) it occurred to me that I had tried it that one time." (Exhibit 6).

Applicant knew or should have known that she had used marijuana while holding a security clearance, less than four years before she completed her SCA. I do not find her explanation, that she simply forgot that she had ever used marijuana credible, particularly since she had received her clearance in 1994, and should have known, at that time, the Government's absolute prohibition against using any illegal substance while holding a clearance. She also claimed that the marijuana was not something of which she was proud, and it made her feel sick (Exhibit 6). Based on these statements, I conclude that it is unlikely that Applicant forgot that she used marijuana while possessing a security clearance.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future."

The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance. This the Applicant has not done.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has financial irresponsibility, (Guideline F), that she has used illegal drugs, (Guideline H), and that she has exhibited poor judgement and untrustworthy behavior, (Guideline E). Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against her regarding Guidelines F and E.

(Guideline F - Financial Considerations)

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness. It shows Applicant has a long history of financial difficulties,

and there is no evidence that Applicant has learned how to handle her finances now any better than she did in the past.

Applicant's overall conduct pertaining to her financial obligations falls within Financial Considerations Disqualifying Condition (DC) (E2.A6.1.2.1.), and DC (E2.A6.1.2.3.), a history of not meeting financial obligations, and an inability or unwillingness to satisfy debts. I find that no Mitigating Condition (MC) is applicable to this case.

Until Applicant makes a good-faith effort to resolve her debts, and she can establish a record of financial responsibility and stability, security concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant.

(Guideline H - Drug Involvement)

With respect to Guideline H, the Government has established its initial case. Applicant's improper and illegal drug abuse is of concern, especially in light of her desire to have access to the nation's secrets. The fact that Applicant used illegal substances, while holding a security clearance, must also be considered adversely to Applicant. Applicant's overall conduct pertaining to her illegal substance abuse clearly falls within Drug Involvement DC (E2.A8.1.2.1.), any drug abuse, and DC (E2.A8.1.2.2.), illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Based on the fact that Applicant only used marijuana one time in 1998, I conclude that Applicant's conduct comes within MC (E2.A8.1.3.1.), the drug involvement was not recent. and MC (E2.A8.1.3.2.), the drug involvement was isolated. MC (E2.A8.1.3.3.) also applies because of Applicant's stated intention not to continue using marijuana in the future.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant used an illegal drug under Guideline H. Applicant, has introduced evidence in rebuttal, explanation or mitigation. Under this Guideline, the mitigation is sufficient to overcome the Government's case against her. Accordingly, Paragraph 2, Guideline H, is concluded for Applicant.

(Guideline E -Personal Conduct)

With respect to Guideline E, the evidence establishes that Applicant furnished to the Government less than complete, honest answers, regarding her marijuana usage, especially while holding a security clearance, in a SCA, completed on January 17, 2002.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts or fails to furnish relevant information to a Government investigator, it is extremely difficult to conclude that she nevertheless possesses the judgment, and honesty necessary for an individual given a clearance. In this case, there has been no reasonable explanation for Applicant's failure to inform the Government about her drug usage. I conclude that Applicant knowingly and willingly failed to give complete, honest answers to the Government.

In reviewing the DCs under Guideline E, I conclude that DC (E2.A5.1.2.2.) applies because Applicant deliberately provided false and misleading information to the Government in a SCA. No MC applies in this paragraph. Applicant's conduct, considered as a whole, including her drug usage while holding a security clearance, and the misinformation that she provided to the Government, exhibits questionable judgement, unreliability, and a lack of candor. I resolve Paragraph 3, Guideline E, against Applicant

FORMAL FINDINGS

Paragraph 1. Guideline F: 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

Paragraph 2. Guideline H: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

DECISION

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

Martin H. Mogul

Administrative Judge