

DATE: June 6, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08947

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had two alcohol-related arrests in 2002. She failed to list one of these alcohol-related arrests on the security clearance application she completed in August 2002. Nothing in the record indicates a diagnosis of alcohol dependence or abuse. Applicant presented evidence to mitigate her personal conduct. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 6, 2004, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on September 28, 2004, and requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on April 1, 2005. The FORM contained documents identified as Items 1 through 6. By letter dated April 5, 2005, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant did not file any information within the required time period. On May 31, 2005, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains four allegations of disqualifying conduct. Three allegations relate to conduct charged under Guideline G, Alcohol Consumption; and one allegation relates to conduct charged under Guideline E, Personal Conduct. In her answer to the SOR, Applicant admitted the three allegations under Guideline G. She admitted, with explanation, the one allegation under Guideline E. Applicant's admissions are incorporated as findings of fact.

Applicant was born in 1980 and is now 25 years old. She holds an associate of arts degree and is employed as an intern by a defense contractor. Applicant recently married, and she and her husband have purchased a home.

Applicant completed a security clearance application (SF-86) on August 14, 2002. In response to Question 27 on the SF-86, Applicant stated that between February 1996 and July 2000, she used marijuana approximately 100 times. She stopped using marijuana in July 2000 and has not used it since. She does not intend to use marijuana in the future.

Also in response to Question 27, Applicant acknowledged that between January 1998 and October 1998, she abused the prescription drug morphine three times. Applicant's sister was suffering from cancer and had morphine, in both pill and liquid form, prescribed for pain. On two different occasions, Applicant ingested a morphine pill belonging to her sister. On another occasion, she tried some of the liquid morphine. Applicant says she took the morphine out of curiosity and pursuant to a desire to experiment. She regrets abusing her sister's prescription drug and does not intend to abuse any prescription drugs in the future.

Applicant was arrested twice in 2002 for conduct related to excessive alcohol use, and she admits drinking alcohol to excess in 2002. In February 2002, she was arrested and charged with operating a vehicle under the influence of alcohol (DWI). Her blood alcohol level was tested and found to be over the legal limit. On April 9, 2002, the charge was nolle prosequi. In May 2002, Applicant was arrested and charged with being drunk in public and trespassing. She was found guilty of the public drunkenness charge, and the trespassing charge was dismissed. Applicant paid a fine of \$90.00. She was age 22 when arrested for each offense.

Question 24 on the SF-86 reads as follows:

Your Police Record - Alcohol/Drug Offenses

Have you ever been charged with or convicted of any of any offenses(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C.3607.

In response to Question 24, Applicant listed her arrest in February 2002 for DWI. She did not list her arrest in May 2002 for public drunkenness. When she was interviewed by a special agent of the Defense Security Service on December 10, 2002, Applicant said her failure to list the public drunkenness arrest was an oversight. She said she was not attempting to withhold or hide information. She also stated: "These two incidents involving alcohol have really changed the way I handle my social life. I currently drink very little and will never again attempt to drive after having had even one drink." (Item 5, at 3.) Applicant also stated she has never had a drinking problem and has never required alcohol-related counseling or treatment. (Item 5, at 3.)

In her response to the SOR, Applicant stated again she had not listed the public drunkenness arrest because she had been told by her attorney it was a misdemeanor and would not be a part of her record. (Item 3.) She also stated she had made changes in her life since the DWI and public drunkenness arrests in February and May 2002. She said she had matured, married, and purchased a home with her husband and, as a result, she no longer put herself in situations similar to those which had caused her two alcohol-related arrests. (Item 3.)

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 personal 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. These factors comprise the whole person criterion and are used to evaluate whether the applicant meets the security guidelines. The factors include (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 the participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation or duress; and (9) the likelihood of continuation or reoccurrence.

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 G - Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol, at times to excess and to the point of intoxication, in at least 2002 (¶ 1.a.); that she was arrested in February 2002 and charged with DWI, that her blood alcohol content exceeded the legal limit; and that the charge was nolle prosequi (¶ 1.b.); and that she was arrested in May 2002, charged with public drunkenness and trespassing, detained overnight in jail, found guilty of public drunkenness and fined \$90.00, and the trespassing charge was dismissed (¶ 1.c.) 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. Directive ¶ E2.A7.1.1.

Conditions that could raise a security concern and may be disqualifying include 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 (E2.A7.1.2.1.); and habitual or binge consumption of alcohol to the point of impaired judgment (E2.A7.1.2.5.).

With respect to the Guideline G conduct alleged in the SOR, the Government has established its case. Applicant admits one arrest for driving under the influence of alcohol and a conviction for public drunkenness, disqualifying conduct under E2.A7.1.2.1. During the period of her alcohol-related conduct in 2002, she admits to consuming alcohol to the point of impaired judgment, which raises a security concern under disqualifying condition E2.A7.1.2.5.

We turn to an examination of the mitigating conditions that might be applicable in this case. First, Applicant's two alcohol-related events occurred in February and May 2002, when she was 22 years old. There are no alcohol-related events reported for Applicant before 2002, and none after May 2002. Applicant has no history of alcohol addiction and has never been referred for alcohol-related counseling or treatment. She has not been diagnosed as an alcoholic, alcohol dependent, or an alcohol abuser by any qualified medical professional or licensed clinical social worker within the meaning of disqualifying conditions E2.A7.1.2.3 or E2.A7.1.2.4 of Guideline G. Applicant's two alcohol-related events,

while close together in time, occurred three years ago and there is no indication of a recent problem. I conclude that Applicant's alcohol-related incidents do not indicate a pattern and that her present conduct does not indicate a recent problem with alcohol. Thus, mitigating conditions E2.A7.1.3.1 and E2.A7.1.3.2 are applicable.

Applicant has a history of youthful over-indulgence and irresponsibility while single and

in her early twenties. She presents statements that, with marriage, home ownership, and a serious commitment to her career, she has made significant alterations in her outlook and behavior supportive of sobriety. She drinks alcohol in moderation and no longer drinks and drives. Her statements and behavior demonstrate a commitment to reliable conduct, to the use of good judgment, and particularly to responsible and lawful drinking. Accordingly, I find Applicant demonstrates positive changes in behavior supportive of sobriety and, thus, mitigating condition E2.A7.1.3.3 applies to her case. The SOR allegations in ¶¶ 1.a. through 1.c. are concluded for the Applicant.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on her SF-86 when she did not list her arrest for public drunkenness in her response to Question 24 (¶ 2.a.). Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

If an applicant deliberately omits, conceals, or falsifies relevant and material facts from any personnel security questionnaire or personal history statement used to conduct investigations to determine security clearance eligibility or trustworthiness, a security concern is raised under disqualifying condition E2.A5.1.2.2. of the Directive. The security concern resulting from falsification can be mitigated if it was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. E2.A5.1.3.2.

Applicant admitted with explanation omitting her arrest for public drunkenness from her response to Question 24 on her SF-86. She denied intentional falsification and explained she did not include the public drunkenness arrest because her lawyer had told her it was a misdemeanor and would not appear on her record. In her answer to Question 24, she listed her DWI and the fact the charges against her had been dropped. Applicant explained her omission was a misunderstanding of the question and not an attempt to falsify or mislead.

Question 24 requires that an individual "report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record." At the time she completed her SF-86, Applicant was 22 years old and a lay person, not a trained investigator or lawyer. She interpreted her lawyer's explanation to mean that her public drunkenness arrest had not been made a part of her record and therefore could not be sealed or stricken. I find her explanation of her conduct in answering Question 24 credible.

Applicant answered the question on the SF-86 relating to her drug use fully and in detail. She reported her DWI and its disposition. She did not try to hide embarrassing and incriminating information. I conclude her omission of the public drunkenness charge was a mistake and not intentional. She has successfully provided an explanation for her conduct that rebuts the disqualifying condition alleged by the Government. The SOR allegation at ¶ 2.a. is concluded for the Applicant.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of the case. Under the whole person concept, I conclude that Applicant has successfully demonstrated that it is clearly consistent with the national interest to grant her a security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

DECISION

In light of all of 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. Clearance is granted.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.