

KEYWORD: Criminal Conduct

DIGEST: Applicant's criminal activity occurred over five years ago. Since then she has become a law abiding, productive member of society. Clearance is granted.

CASENO: 03-12292.h1

DATE: 10/19/2005

DATE: October 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12292

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's criminal activity occurred over five years ago. Since then she has become a law abiding, productive member of society. Clearance is granted.

STATEMENT OF THE CASE

On December 8, 2003, 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, 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 February 17, 2004, and elected to have her case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about April 8, 2004. Applicant filed a response to the FORM on or about July 1, 2004. ⁽¹⁾ The case was assigned to me on June 3, 2004.

FINDINGS OF FACT

Applicant is a 29 year old employee of a defense contractor.

In 1998, applicant was working at a department store. The father of her children (WG) came into the store and pressured her into undercharging him for merchandise. Applicant was caught and charged with Theft Over \$300.00. In February 1999, she pleaded guilty to the charge and was sentenced to probation for two years.⁽²⁾ She complied with all probation requirements. Upon the petition of her probation officer, the Court terminated her probation after only one year.

In 1998, applicant was charged with and convicted of Telephone Harassment. The charge was the result of applicant calling WG's house about 13 times during a three hour period. Applicant, who had legal custody of their children, made the calls in an attempt to get WG to return the children to her.

In 1996, applicant and a neighbor got into an altercation. Apparently charges of Assault and Battery were filed against each of them. Applicant was never prosecuted.

In March 1994 applicant was charged with (1) Failure of Vehicle Driver to Stop After Unattended Vehicle Damage and (2) Driving Without a License. She was convicted of the first charge and fined \$235.00. She was convicted of the second charge, was fined \$500.00, ordered to pay restitution to the victim, and was placed on probation for two years.

In her response to the FORM, applicant made the following statement:

I have made many irresponsible mistakes in my past. Over the last five to six years I have matured greatly and have a very positive perspective on my life and my children's lives. In that time I have accomplished quite a few things. I was enrolled in the Jackson Hewett's tax classes and I work at home during tax season as a paid tax preparer. I have taken classes for Medical Billing and have become certified through [community college] . . . I attend college part-time.

I do not drink alcohol nor have I ever used any drugs. I am not prone to criminal behavior. I was physically coerced by my kid's father [WG] into the criminal act of theft. There are many hospital and district court records and documents that can support that I was physically and emotionally abused by [WG]. He physically abused me quite frequently during the time frame between 1993 up to the year 2000. There are also [court] records that will show that he attempted to kill my youngest daughter and myself . . . I am not trying to use him as an excuse as to why I committed the act of theft. I admit that I knew it was wrong, but I felt like my life and my children's lives were threatened if I did not do what he asked . . . [WG] is no longer a part of my life or my children's lives. I have not spoken to him since the day that he went to trial in 2002.

I believe that I have made good faith efforts to correct my wrongs. Despite what my past states on paper, I am not the person I use to be. My past motivates me to do better in life.

A coworker since 2001 wrote a letter in which she states that she has seen nothing "but honesty and integrity" in applicant.

CONCLUSIONS

The evidence establishes that applicant was charged with and convicted of one serious offense (Theft) in 1998/1999, and relatively minor offenses in 1998 (Telephone Harassment) and 1994 (two traffic-related offenses). This conduct reflects adversely on applicant's judgment and reliability, and requires application of Disqualifying Condition E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*).

The evidence further establishes that applicant has not engaged in criminal conduct since October 1998, over five years ago. Since then, she has become a productive member of society, as evidenced by, among other things, the education she acquired and her continuous employment in the defense industry since 2001. Undoubtedly, this turnaround is attributable, at least in part, to the fact WG is no longer involved in her life. She qualifies for Mitigating Conditions E2.A10.1.3.1 (*the criminal behavior was not recent*), E2.A10.1.3.3 (*the person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*), E2.A10.1.3.4 (*the person did not voluntarily commit the act and/or 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

1. Department Counsel submitted a letter that indicated he had no objection to applicant's late submission.
2. There is conflicting evidence in the record concerning her sentence. However, because she clearly did not serve a year or more in jail, 10 U.S.C. 986 does not apply.