

KEYWORD: Drugs, Alcohol; Personal Conduct

DIGEST: Applicant is a 43-year-old technical employee of a defense contractor who has used marijuana and alcohol for many years. She filed an application for a security clearance (SF 86) in December 2000 and deliberately omitted information about her marijuana use and alcohol consumption since she knew it would adversely affect her employment prospects. No mitigating conditions are applicable. Clearance is denied.

CASENO: 03-12361.h1

DATE: 05/12/2005

DATE: May 12, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12361

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 43-year-old technical employee of a defense contractor who has used marijuana and alcohol for many years. She filed an application for a security clearance (SF 86) in December 2000 and deliberately omitted information about her marijuana use and alcohol consumption since she knew it would adversely affect her employment prospects. No mitigating conditions are applicable. Clearance is denied.

STATEMENT OF CASE

On August 10, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On August 24, 2004, Applicant responded to the allegations, and requested a hearing. The matter was assigned another judge December 16, 2004 and re-assigned to me on February 2, 2005. A notice of hearing was issued on February 8, 2005, and a hearing was held on March 1, 2005. Six government exhibits and ten Applicant exhibits were admitted into evidence. The Applicant testified and called five witnesses who testified on her behalf. The transcript was received on March 10, 2005.

FINDINGS OF FACT

Applicant admitted all of the allegations relating to drug involvement, alcohol consumption, and personal conduct but cited mitigating factors as to each of the allegations. After a complete review of the evidence in the record and upon due consideration of the record the following findings of fact are made:

Applicant is a 43-year-old technical employee of a defense contractor who has used marijuana and alcohol for many years. She filed an application for a security clearance (SF 86) in December 2000 and omitted information about her marijuana use and alcohol consumption on the advice of a friend in the military who told her that it would preclude her employment prospects. She did acknowledge one alcohol related traffic offense in 1981 on the SF 86.

Applicant suffered from depression and attention deficit disorder. She stopped drinking in May 2004 on the advice of her doctor to do so while taking a certain medicine for the disorder. She used marijuana as "self-medication" for depression sporadically since 1978 but stopped using it in March, 2003.

Applicant was arrested for marijuana and alcohol possession in her automobile in May 2001 and sentenced to six months probation and fines totaling \$1,000.00. The marijuana possession charge was dropped but she was convicted of possession of paraphernalia.

Applicant is well regarded in her work (Exhs A-D) and has a stable group of friends and work colleagues who support her and testified on her behalf. Her physical illness has improved and she is motivated to improve her healthcare (Exh. H). Applicant has a college degree and is working on a graduate degree in behavioral science to become a counselor.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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 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 recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. See Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information See *Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved

in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The government has cited Disqualifying Condition (DC) 1 under Guideline H concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. The following definition is provided: "Drug abuse is the illegal use of a drug" (E2.A8.1.1.3) Possible Mitigating Conditions that might be applicable are that the drug involvement was not recent. (E2.A8.1.3.1.), the drug involvement was an isolated or aberrational event (E2.A8.1.3.2), and there is a demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.) The 2001 drug charge and conviction occurred after the SF 86 was filed and after she was employed by a defense contractor. Thus, she had admitted continued drug use after obtaining an interim security clearance. No mitigating conditions are applicable.

The government has cited a Disqualifying Condition (DC) pursuant to the Directive concerning alcohol consumption

under Guideline G. This relates to excessive alcohol consumption (E2.A7.1.1) and alcohol-related incidents away from work, such as driving while under the influence. (E2.A7.1.2.2.) Applicant established mitigating factors including the fact that the one event occurred a number of years ago and there is no current problem (E2.A7.1.3.2.), and that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.) While Applicant stopped drinking in May 2004, that a sufficient period of time has elapsed to conclude that the conduct has changed and the mitigating condition is applicable. This is especially so since she testified at the hearing that she had consumed occasional beers at social events during the one year period prior to the hearing date.

The government has also alleged personal conduct under Guideline E of the Directive, relating to questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations that could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) The Government has offered evidence that Applicant has deliberately omitted and concealed relevant and material facts about her drug and alcohol use on her SF 86. (E2.A5.1.2.2.) Applicant admitted that she withheld this information on her SF 86 in an effort to obtain the employment she has now held for over four years. No mitigating conditions are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant is a person who has had physical and emotional difficulties in the maturation process. She has made considerable progress and shows ambition and future promise. However, in view of her past conduct some of which is fairly recent, I conclude that it is premature to grant her a security clearance.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is not clearly consistent with the national interest to grant a security clearance to her.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: For Applicant

Paragraph 3 Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

DECISION

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

Charles D. Ablard

Administrative Judge