

DATE: September 29, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-07182

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant's history of drug-related charges, and her omission of some of them from a 2004 security clearance application generates drug involvement, criminal conduct, and personal conduct security concerns. Although her most recent charge was more than two years ago, and she successfully complied with the terms of probation, her past conduct remains a security concern because of its recurring nature, its recency, and the lack of credibility she displayed when discussing it at the hearing. Clearance is denied.

STATEMENT OF THE CASE

On January 27, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive). The SOR alleges security concerns under Guideline H for drug involvement, Guideline J for criminal conduct, and Guideline E for personal conduct. Applicant answered the SOR on March 29, 2006, and requested a hearing.

The case was assigned to me on June 16, 2006. I issued a notice of hearing on July 6, 2006, scheduling it for July 26, 2006. The hearing was held as scheduled. During the hearing, I received eight government exhibits, three Applicant exhibits, and the testimony of Applicant. DOHA received the transcript on August 7, 2006.

FINDINGS OF FACT

Applicant's admissions in her answer to the SOR are incorporated in my findings of fact. In addition, I make the following findings of fact.

Applicant is a 40-year-old, single woman with a high school education who has been working in the information

[\(1\)](#)

technology field since 1996. In 2005, she obtained certification as an information systems security professional.

In the late 1980s, Applicant experienced financial difficulties that rendered her unable to pay her car insurance. This led to the suspension of her driver's license. Applicant continued to drive, however. Subsequently, she was charged five times between 1990 and 1993 with driving with a suspended license. The first charge, in February 1990, resulted in a \$500 fine and an extension of the suspension of her license for an additional 30 days. The October 1990 charge resulted in an arrest warrant being issued after she failed to appear for the hearing. The January 1993 charge resulted in an \$826 fine, and the October 1993 and November 1993 charges resulted in warrants being issued for her arrest after she failed to appear at the respective hearings

Applicant was unaware that she had any outstanding traffic fines until the beginning of the security clearance investigation process in 2004. She then retained an attorney who assisted her in scheduling hearings in these outstanding matters, quashing the warrants, and paying the respective fines. ⁽²⁾

Applicant has a history of involvement with illegal drugs. In August 1993, she was arrested and charged with possession of a controlled dangerous substance. ⁽³⁾ Sentencing was deferred pending her satisfactory completion of a one-year diversionary program. In February 1995, after completing the diversionary program, the charges were dismissed. ⁽⁴⁾ When asked at the hearing to elaborate upon the circumstances leading to the arrest, Applicant testified that she could not remember them. ⁽⁵⁾

On November 6, 1995, Applicant was arrested and charged with possession of a controlled dangerous substance. The charges were later dismissed.

On the evening of March 25, 2004, Applicant was arrested and charged with possession of a controlled dangerous substance after the police, during a roadside stop, discovered cocaine in her coat pocket. At the hearing, she offered conflicting testimony about the circumstances preceding the arrest. Initially, she testified that she did not know how the cocaine got in her pocket. ⁽⁶⁾ Later, she testified that she was "set-up" by the driver of the vehicle who, upon being stopped by the police, asked her to hold onto a number of miscellaneous personal belongings without telling her that the belongings included cocaine wrapped in tissue. ⁽⁷⁾

During the investigative process, Applicant also offered conflicting characterizations of the relationship between her and the driver of the vehicle involved in the March 2004 incident. In a signed, sworn statement of January 2005, she described her as a friend, whereas at the hearing, she testified that she did not know her, and was merely getting a ride home with her from a mutual friend's residence when the police stop occurred. ⁽⁸⁾

On August 26, 2004, Applicant pled guilty, and agreed to two years probation. The terms of probation included the forfeiture of her driver's license for six months, and the requirement that she receive a substance abuse evaluation, undergo periodic drug testing, and perform 40 hours of community service. ⁽⁹⁾ As a result of the plea, the court deferred sentencing for two years pending her compliance with the terms of the plea agreement.

Applicant completed the substance abuse assessment in June 2005. ⁽¹⁰⁾ No further treatment was recommended. ⁽¹¹⁾ On August 26, 2006, her probation expired after she complied with its remaining terms.

Applicant completed security clearance applications in 2000 and 2004. In response to Question 24 on both applications (*Have you ever been charged with or convicted of any offense(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*), ⁽¹²⁾ she did not disclose her 1993 and 1995 drug charges. She stated in her Answer that she thought they did not need to be revealed because they had been expunged. ⁽¹³⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching impartial, common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are raised:

Guideline H - Drug Involvement: Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Guideline J - Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Guideline E - Personal Conduct: 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 pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest." [\(14\)](#) In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather

than actual, risk of compromise of classified information.

Applicant's loyalty is not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

Drug Involvement

Applicant's drug-related arrests trigger the applicability of Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*). I have considered all of the mitigating conditions and conclude none apply. Although she has not been involved with illegal drugs for two years, she was on probation for drug possession as recently as August 2006. Moreover, given that her most recent drug involvement recurred after a nine-year hiatus, the risk of recurrence at this time remains unacceptably high.

Criminal Conduct

Applicant's drug-related arrests in conjunction with her traffic infractions trigger the applicability of Criminal Conduct Disqualifying (CC DC) E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*). The traffic infractions were minor in nature, and the most recent one occurred more than 10 years ago. When Applicant discovered outstanding warrants related to them, she promptly retained an attorney who resolved the issue on her behalf.

Although Applicant's resolution of her outstanding traffic infractions constitutes evidence of mitigation, it is insufficient to mitigate the criminal conduct security concern when considered together with the drug-related charges, for the reasons described above. None of the mitigating conditions apply.

Personal Conduct

Applicant's omission of her 1993 and 1995 drug-related arrests from two security clearance applications raises the issue of whether Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*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*) applies. Contrary to Applicant's contention that she did not list them because she thought they had been expunged, these omissions were a deliberate attempt to minimize the history of legal problems created by her drug involvement. These omissions were consistent with her tendency throughout the hearing to minimize her history of drug involvement, particularly with respect to her outlandish explanation for the 2004 arrest, and her contention that she could not remember the circumstances of the 1993 arrest. PC DC E2.A5.1.2.2 applies without mitigation.

Whole-Person Concept

Given the lack of credibility Applicant displayed at the hearing when discussing her history of drug abuse, I am not convinced that any rehabilitation has occurred sufficient enough to alleviate the security concerns. I also remain concerned with the recurrence of drug involvement in 2004, at age 39, after a nine-year hiatus. Consequently, although Applicant deserves credit for successfully complying with the terms of the 2004 probation order, her past drug involvement, criminal activity and poor personal conduct continue to pose a security concern. Clearance is denied

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1-Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2-Guideline J AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: 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. Clearance is denied.

Marc E. Curry

Administrative Judge

1. Tr. 32.
2. Exhibit B, Letter to Department Counsel from Applicant's Attorney, dated July 25, 2003; Answer, dated March 29, 2006, at 2.
3. The record does not indicate what specific drug was involved.
4. Exhibit 3, Criminal History Diversion Program and Felony Conviction Summary, dated August 6, 2004, at 1.
5. Tr. 43.
6. Tr. 38.
7. Tr. 38.
8. Cf. Exhibit 8, Signed, Sworn, Statement of Applicant, dated January 7, 2005, at 1, with Tr. 27.
9. Exhibit 5, Plea Agreement Memorandum, dated August 26, 2004.
10. Exhibit A, Discharge Summary Report, dated June 20, 2005.

11. *Id.* at 2.

12. Exhibit 1, Security Clearance Application, (SF 86) signed July 15, 2004, at 6; Exhibit 2, SF 86, electronically submitted August 26, 2000, at 9.

13. Answer to SOR, dated March 29, 2006, at 3.

14. *See* Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.