

KEYWORD: Alcohol; Drugs; Personal Conduct; Criminal Conduct

DIGEST: Although the Applicant's unspecified marijuana abuse is not recent, she was less than candid about this Drug Involvement when she executed her August 2000 Security Clearance Application (SCA). This wilful falsification is a violation of 18 U.S.C. 1001. The Applicant also has a long history of excessive Alcohol Consumption, as evidenced by five alcohol related arrests, the last one being in January of 2003. As a result of this last arrest, the Applicant pled guilty to Driving While Ability Impaired. She represented to a state court that she had no prior alcohol related arrests or offenses. This is another wilful falsification. As the Applicant's excessive Alcohol Consumption and Criminal Conduct are recent, and there is a clear pattern of questionable Personal Conduct, mitigation is not shown. Clearance is denied.

CASENO: 03-25403.h1

DATE: 02/07/2005

DATE: February 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25403

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although the Applicant's unspecified marijuana abuse is not recent, she was less than candid about this Drug Involvement when she executed her August 2000 Security Clearance Application (SCA). This wilful falsification is a violation of 18 U.S.C. 1001. The Applicant also has a long history of excessive Alcohol Consumption, as evidenced by five alcohol related arrests, the last one being in January of 2003. As a result of this last arrest, the Applicant pled guilty to Driving While Ability Impaired. She represented to a state court that she had no prior alcohol related arrests or offenses. This is another wilful falsification. As the Applicant's excessive Alcohol Consumption and Criminal Conduct are recent, and there is a clear pattern of questionable Personal Conduct, mitigation is not shown. Clearance is denied.

STATEMENT OF THE CASE

On August 9, 2004, 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 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on August 31, 2004.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on December 10, 2004. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on December 20, 2004, and submitted nothing in reply. The case was received by the undersigned for resolution on February 2, 2005. The issues raised here are whether the Applicant's past Drug Involvement, excessive Alcohol Consumption, Criminal Conduct, and Personal Conduct militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of most of the allegations, except for subparagraphs 1.c., 1.e., 3.d.

and 3.e.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 44 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline G - Alcohol Consumption, Guideline J - Criminal Conduct & Guideline E - Personal Conduct

1.a., 1.b. and 4.a. The Applicant consumed alcohol, at times to excess and to the point of intoxication, from about 1976 until her last alcohol related arrest in January of 2003 (Item 3 at page 2). In **December of 1982**, the Applicant was arrested for, and subsequently pled guilty to, Driving Under the Influence of Alcohol (DUI). As a result of this conviction, her sentence was deferred for two years, and she was ordered to do community service, and to attend alcohol educational classes.

1.c. and 4.a. In **October of 1988**, the Applicant was arrested for DUI and for having .08% More Weight of Alcohol While Driving a Vehicle (Item 6). As a result of this arrest, she was fined, ordered to do community service, and to attend victim impact alcohol classes (*id*).

1.d. and 4.a. In **July of 1990**, the Applicant was arrested, in part, for DUI, and subsequently pled guilty to this charge (Item 7). As a result of this conviction, she was placed on probation for 36 months, fined, and ordered to attend an alcohol program or treatment for 90 days (*id*).

1.e. and 4.a. In **May of 1992**, the Applicant was arrested, in part, for having .08% More Weight of Alcohol While Driving a Vehicle, and subsequently pled no contest to this charge (Item 8). As a result of this conviction, she was sentenced to one year in jail, which was suspended, placed on probation for five years, fined, and ordered to complete an after care program (*id*).

1.f. and 4.a. More recently, in **January of 2003**, the Applicant was arrested, in part, for DUI, and subsequently pled guilty to an amended charge of Driving While Ability Impaired (Item 9). She had consumed alcohol prior to this arrest (Item 9 at page 1). As a result of this last conviction, the Applicant was sentenced to 180 days in jail, which was suspended, placed on probation for six months, fined, ordered to do community service, and to complete a Level II Alcohol Education Class (Item 9). Prior to sentencing, she represented to the court that she had no prior alcohol related arrests or offenses (Item 9 at pages 18 and 19).

Guideline H - Drug Involvement

2.a.~2.c. The Applicant used marijuana an unspecified number of times from about 1978 until her last usage in December of 2000 (Item 3 at page 2, and Item 5 at page 6). She continued to use marijuana after the Applicant was granted a security clearance in March of 1988, and she also purchased the illegal drug (Item 3 at page 2).

Guideline E - Personal Conduct & Guideline J - Criminal Conduct

3.a. and 4.b. In answering question 27 on her August 2000 SCA, the Applicant failed to disclose any of her marijuana usage "in the last 7 years" (Item 4 at page 6). This knowing and wilful falsification is also a violation of 18 U.S.C. 1001.

3.b., 3.c. and 4.b. In answering question 28 on her August 2000 SCA, the Applicant also failed to disclose her marijuana usage subsequent to being granted a Secret Security Clearance in March of 1988 (Item 4 at page 7). This knowing and wilful falsification is a violation of 18 U.S.C. 1001. Her access to Sensitive Compartmentalized Information was withdrawn in March of 2001 (Item 3 at page 2).

3.d. In answering question 27 on her November 2001 SCA, the Applicant disclosed that she used marijuana on three to four occasions between January of 1996 and December of 2000 (Item 5 at page 6). As the Government has failed to establish the frequency of the Applicant's marijuana usage, I can not find this to be a falsification.

3.e. In an interview with an authorized investigator for the Department of Defense, the Applicant again averred that she used marijuana on three to four occasions between 1996 and 2000. As the Government has failed to establish the frequency of the Applicant's marijuana usage, I can not find this to be a falsification.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case.

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, 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 that are speculative or conjectural in nature.

The Government must make out a case under Guidelines H (Drug Involvement), G (Alcohol Consumption), E (Personal Conduct) and J (Criminal Conduct); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

A pattern of Criminal Conduct, raises questions regarding an individual's willingness or ability to protect classified information. Unacceptable Personal Conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

Considering first the Applicant's Alcohol Consumption, it is excessive, as evidenced by five alcohol related arrests. The first disqualifying condition is therefore applicable as there are "[a]lcohol-related conditions away from work, such as driving while under the influence . . . or other criminal incidents related to alcohol use." I can find no countervailing mitigating conditions, as the "alcohol related incidents do . . . indicate a pattern." Furthermore, as the most recent arrest was only two years ago, in January of 2003, there is clearly an "indication of a recent problem;" and the Applicant has presented little evidence of "[p]ositive changes in behavior supportive of sobriety." Guideline G is therefore found against the Applicant.

As to her Drug Involvement, the Applicant admits to using "marijuana, with varying frequency, from approximately 1978 to at least December of 2000," and to purchasing the drug. She further admits to using the illegal substance on three to four occasions between January of 1996 and December of 2000, which is after having been granted a Secret Security Clearance in March of 1988. The first and second disqualifying conditions are therefore applicable. There is "drug abuse," and "illegal . . . purchase." However, I find the first mitigating condition also applicable, as her "drug

involvement was not recent," having occurred more than four years ago. Guideline H is found for the Applicant.

Considering next her Personal Conduct, the second disqualifying condition is applicable, for when she executed her August 2000 SCA, the Applicant failed to disclose any of her before mentioned past Drug Involvement. There is a "deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form used to determine security clearance eligibility . . ." Furthermore, the Applicant lied to a state court in 2003, as to her prior involvement with alcohol. She represented to the court that she had no prior alcohol related arrests or offenses, despite her four prior alcohol related arrests and convictions. The fifth disqualifying condition is also applicable as there is a clear "pattern of dishonesty." As I can find no countervailing mitigation condition here; and as such, Guideline E is also found against the Applicant.

Finally as to her Criminal Conduct, there are five alcohol related arrests and convictions, the use of illegal drugs, and violations of 18 U.S.S. 1001 as the result of her lack of candor in executing her August 2000 SCA. I find the first and second disqualifying conditions are therefore applicable, as there are "admissions of criminal conduct, regardless of whether the person was formally charged;" and there is a "single serious crime or multiple lesser offenses." Again, there are no countervailing conditions, here, as the criminal behavior is recent, the last arrest occurring two years ago. The criminality is clearly not isolated, and the Applicant offers little "evidence of successful rehabilitation." Guideline J is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her Alcohol Consumption, Personal Conduct, and Criminal Conduct. The Applicant has thus not met the mitigating conditions of Guidelines E, G and J, and of Section E.2.2.. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guideline E, G and J.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Paragraph 3: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of 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 the Applicant.

Richard A. Cefola

Administrative Judge