

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant is 26 years-old and has been employed as an administrative assistant for a defense contractor since September 2000. She was arrested for an alcohol-related driving offense in June 2002, and was found guilty of the offense in January 2004. She was also charged with possession of marijuana in February 2003, in a separate incident. Applicant did not disclose her drug arrest on her Security Clearance Application (SF 86) she submitted in August 2003. Applicant failed to mitigate the security concerns regarding her criminal and personal conduct. Clearance is denied.

CASE NO: 04-02235.h1

DATE: 11/08/2005

DATE: November 8, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02235

DECISION OF ADMINISTRATIVE JUDGE

DAVID S BRUCE

APPEARANCES

FOR GOVERNMENT

Raymond T. Blank, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 26 years-old and has been employed as an administrative assistant for a defense contractor since September 2000. She was arrested for an alcohol-related driving offense in June 2002, and was found guilty of the offense in January 2004. She was also charged with possession of marijuana in February 2003, in a separate incident. Applicant did not disclose her drug arrest on her Security Clearance Application (SF 86) she submitted in August 2003. Applicant failed to mitigate the security concerns regarding her criminal and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On May 17, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant alleging facts that raise security concerns addressed in the Directive under Guideline J - Criminal Conduct, and Guideline E - Personal Conduct. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance. By her answer filed June 10, 2005, Applicant admitted the SOR allegations of subparagraphs 1.a. through 1.c., and 2.a., and requested a hearing before an administrative judge.

The case was assigned to me on August 24, 2005, and I conducted the hearing on September 21, 2005. The government submitted exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified at the hearing and offered no documentary evidence. DOHA received the hearing transcript (Tr.) on October 17, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations of the SOR are incorporated herein by reference. In addition, after a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is 26 years-old and not married. She has no children and presently resides with her mother. She has been employed as an administrative assistant for a defense contractor since September 2000, and has been gainfully employed in various other jobs since graduating for high school in 1997. She has never left any job under unfavorable circumstances. [\(1\)](#)

On June 26, 2002, Applicant was charged with Driving Under the Influence of Alcohol and spent the night in jail. She was found guilty of the offense in January 2004, and was given a suspended jail sentence. She was further directed to pay \$737.00 in fines and costs, and was required to attend and complete an Alcohol Drug Substance Program (ADSAP). It is unclear whether or not Applicant was placed on probation as a part of the disposition of the case. She also lost her driving privileges for one year for refusing to take a breathalyzer test. [\(2\)](#) Applicant completed the ADSAP alcohol education and counseling program in June 2005, which consisted of two sessions per week for four weeks. [\(3\)](#) Her driver's license was reinstated upon her completion of the ADSAP course. [\(4\)](#)

Applicant was arrested on February 19, 2003, and charged with possession of marijuana. [\(5\)](#) The charges were later dismissed following Applicant's successful completion of 12 hours of community service. [\(6\)](#)

Applicant signed her Security Clearance Application (SF 86) on August 15, 2003. As to Question 24, **Your Police Record - Alcohol/Drug Offenses**, Applicant failed to disclose she was arrested and charged with possession of marijuana in February 2003. [\(7\)](#) She also did not disclose the incident when she had her first interview with a Defense Security Service (DSS) investigator on December 2, 2003. [\(8\)](#) When Applicant later met with a second DSS Special Agent on June 21, 2004, she candidly discussed the facts and circumstances of the matter with the investigator. [\(9\)](#) Applicant acknowledged she did not include the information on her SF 86 because she was "scared" it would be a basis to deny her security clearance. [\(10\)](#)

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at well-informed decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽¹¹⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.⁽¹²⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions by substantial evidence which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.⁽¹³⁾ The legal standard for the burden of proof is something less than a preponderance of

the evidence.⁽¹⁴⁾ When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.⁽¹⁵⁾

Upon consideration of all the evidence submitted in this matter, the following adjudicative guidelines are appropriate for evaluation with regard to the facts of this case:

Guideline J - Criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Guideline E - Personal conduct is a security concern because conduct involving questionable judgment, trustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established a *prima facie* case for disqualification under Guideline J - Criminal Conduct.

Based upon all the evidence, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.2. (*A single serious crime or multiple lesser offenses*), and CC DC E2.A10.1.2.1. (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), apply in this case. Applicant was charged with Driving Under the Influence of Alcohol in June 2002. For reasons that are not clear, her case did not come to court for trial until January 2004, when she was found guilty of the offense. Applicant did not complete her court-ordered alcohol education and counseling program until June 2005. While the charges for this alcohol driving offense were still pending in court in February 2003, Applicant was charged with possession of marijuana. The marijuana charge was ultimately dismissed upon Applicant's completion of 12 hours of community service. These two events qualify as multiple lesser offenses within the meaning of Guideline J, particularly when the second offense occurred while the first offense was still pending before the court and not resolved.

In addition, Title 18 U.S.C. § 1001, provides that knowingly and willfully submitting materially false, fictitious, or fraudulent information in any matter within the jurisdiction of the U.S. Government is a crime punishable by a fine and up to five years imprisonment. Applicant's conduct in deliberately omitting significant material information about her arrest for possession of marijuana required to be provided as a part of her SF 86 qualifies as serious uncharged criminal conduct within the meaning of Guideline J.

I have considered all the Criminal Conduct Mitigating Conditions (CC MC), and especially CC MC E2.A10.1.3.1. (*The criminal behavior was not recent*), CC C E2.A10.1.3.2. (*The crime was an isolated event*), and CC MC E2.A10.1.3.6. (*There is clear evidence of successful rehabilitation*). I conclude none apply in this case. While Applicant's driving

offense occurred over three years ago, she only completed the court-ordered counseling component of the case a little over three months ago. The marijuana charge occurred in February 2003, while the alcohol driving charge was still outstanding. She completed 12 hours of community service in order to have the drug charge dismissed. In the context of this matter, these charges and their respective dispositions through criminal court cannot be considered isolated or aberrational events, and they were fully resolved only recently.

It is commendable that Applicant has now completed her court mandated alcohol counseling, however, she offered no justifiable excuse for taking three years to complete a simple alcohol education and awareness program.⁽¹⁶⁾ She failed to conscientiously pursue a positive disposition of her case.⁽¹⁷⁾ Simply blaming her lawyer does not meet her heavy burden of persuasion to effectively mitigate the government's concerns.⁽¹⁸⁾ Applicant did not demonstrate through her actions a prompt and serious commitment to change her lifestyle after the offense occurred, exemplified by the fact she permitted herself to be in a position to be arrested for drug possession about eight months later. The presence or absence of rehabilitative and other pertinent positive behavioral changes are significant factors in the overall adjudicative process. To her credit, Applicant has made positive changes in her lifestyle supportive of her efforts to abstain from the use of illegal drugs and excessive consumption of alcohol.⁽¹⁹⁾ The long-term positive influence of her counseling and new lifestyle, however, is presently uncertain, and not enough time has passed to be confident Applicant has achieved a full understanding of the behavioral and psychological effects of her actions. She has failed to demonstrate mature personal insight into her actual motivation for her prior behavior, typically illustrated by an extended period of responsible conduct.

I have further considered all the facts in evidence set forth above and conclude the government has also established its case for disqualification under Guideline E - Personal Conduct. Based on all the evidence, 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 in this case. Applicant was aware when she completed her SF 86 in August 2003 she had been arrested six months earlier for drug possession. She admitted she did not include the information because she was afraid it would negatively impact her security clearance application. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. Based upon truth and honesty, the process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant raises serious concerns about the character and overall integrity of the individual. The government's evidence and Applicant's admissions constitute substantial evidence of a disqualifying condition under Guideline E.

I have considered all the Personal Conduct Mitigating Conditions (PC MC), and especially PC MC E2.A5.1.3.3. (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and conclude it does not apply. Applicant had an affirmative obligation to determine the true status of all information requested in the SF 86, and to fully provide and disclose complete and accurate answers to each item of the questionnaire. Question 24 is not limited to information about criminal convictions, but also applies to simply being charged with any offense related to drugs or alcohol.⁽²⁰⁾ The omission on her SF 86 was apparent to Applicant when she prepared her answers and was made intentionally. The omission was a deliberate and self serving attempt by Applicant to mislead and inappropriately influence the outcome of her security clearance application. Applicant first met with a Defense Security Service (DSS) investigator on December 2, 2003.⁽²¹⁾ Applicant's marijuana arrest ten months earlier was not discussed. Applicant did not openly disclose the facts related to the arrest until she was

confronted with the subject during a second interview she had with another DSS Special Agent on June 21 2004, 16 months after the incident. ⁽²²⁾ Applicant had many months to reconsider her response and properly disclose the correct information, particularly noting she had a full opportunity to do so during the first DSS interview. Considering all the circumstances, Applicant's candor and credibility are questionable given the seriousness and chronology of the events. Accordingly, Applicant has failed to successfully mitigate the personal conduct security concerns raised in this case.

I have further reviewed all the record evidence in this case with respect to the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has failed to mitigate the security concerns regarding the criminal conduct and personal conduct issues raised in this case. Accordingly, Guidelines J and E are decided against Applicant.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Criminal Conduct (Guideline J) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Paragraph 2. Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the 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.

David S. Bruce

Administrative Judge

1. GE 1 (Applicant's Security Clearance Application dated August 14, 2003), at 3-4, and 7.
2. GE 7 (Applicant's statement to Defense Security Service (DSS) Special Agent dated June 21, 2004), at 1. See also GE 4 (Incident Report dated June 26, 2002).
3. Tr. at 25-26.
4. *Id.* at 28.
5. GE 6 (Incident report with mug shot dated February 19, 2003).
6. GE 7, *supra* note 2, at 2.
7. GE 1, *supra* note 1, at 8.

8. GE 5 (Applicant's statement to DSS investigator dated December 2, 2003).
9. GE 7, *supra* note 2, at 1-2.
10. Tr. at 32.
11. Directive, Enclosure 2, Para. E2.2.2.
12. Executive Order 10865 § 7.
13. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
14. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
15. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.
16. Tr. at 25-26.
17. Tr. at 26-28.
18. *See Egan, supra* note 13, at 528 and 531.
19. Tr. at 42, 43 and 50.
20. GE 1, *supra* note 1, at 8.
21. GE 5, *supra* note 8.
22. GE 7, *supra* note 6.