

KEYWORD: Personal Conduct, Drugs

DIGEST: Applicant drank alcohol and used illegal drugs for recreational purposes as a teenager. In 1998, she pled guilty to possession of drug paraphernalia and under age consumption of alcohol. By age 20, she ceased using all illegal drugs except marijuana, which she stopped using in 2002 at age 23. She suffers from sleep problems, which cause her to arrive at work late. She has mitigated and overcome the government's security concerns under Guidelines E and H. Clearance is granted.

CASENO: 04-04491.h1

DATE: 11/29/2005

DATE: November 29, 2005

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 04-04491

**DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant drank alcohol and used illegal drugs for recreational purposes as a teenager. In 1998, she pled guilty to possession of drug paraphernalia and under age consumption of alcohol. By age 20, she ceased using all illegal drugs except marijuana, which she stopped using in 2002 at age 23. She suffers from sleep problems, which cause her to arrive at work late. She has mitigated and overcome the government's security concerns under Guidelines E and H. Clearance is granted.

**STATEMENT OF THE CASE**

On April 27, 2005, 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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. Specifically, the SOR set forth security concerns arising under Guideline E, Personal Conduct, and Guideline H, Drug Involvement, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 27, 2005, Applicant submitted a notarized response to the allegations. She requested a hearing. This matter was assigned to another administrative judge, but reassigned to me on September 13, 2005 because of caseload considerations. A notice of hearing was issued on September 26, 2005, and a hearing was held on October 13, 2005. Five Government Exhibits and eight Applicant Exhibits were admitted into evidence without objection. At the hearing, the

government moved to strike allegation 1.c under Guideline E. Applicant did not object. The government's motion was granted.<sup>(1)</sup> Two additional Government Exhibits were admitted for administrative notice. Applicant and six witnesses testified on her behalf. The hearing transcript (Tr.) was received on October 26, 2005.

## FINDINGS OF FACT

Applicant admitted, with explanation, allegations under Guideline E (Subparagraphs 1.a,1.b, and 1.d. through 1.l) and Guideline H (Subparagraph 2.a) of the SOR.<sup>(2)</sup> Those admissions are incorporated here as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 26-year-old staff administrator for a defense contractor.<sup>(3)</sup> She has worked for this contractor for almost three years.<sup>(4)</sup> She also works part-time as a waitress.<sup>(5)</sup> She completed a security clearance application (SF 86) in February 2002.<sup>(6)</sup>

Applicant graduated high school in 1997. She has attended college, but has not received a degree.<sup>(7)</sup> She married in 2000<sup>(8)</sup> and divorced in January 2005.<sup>(9)</sup> She lives alone.<sup>(10)</sup> Because her parents live abroad, she helps care for her elderly grandparents, who live nearby.<sup>(11)</sup> She pays her bills on time and has a good credit record.<sup>(12)</sup> Her extracurricular activities include exercising, reading and spending time with friends and family.<sup>(13)</sup>

In 1994, as a 15-year-old high school sophomore, Applicant started smoking marijuana on and off and for recreational purposes.<sup>(14)</sup> Between 1994 and 1998, she also experimented, on a recreational basis, with LSD, cocaine and amphetamines.<sup>(15)</sup> She would occasionally purchase these drugs for her own use.<sup>(16)</sup> On separate occasions in 1997, she illegally used the prescription drugs Valium and percodan (for pain) once. A friend, not a physician, gave her these drugs.<sup>(17)</sup> After 1998, she stopped using all drugs, except marijuana, which she continued to smoke on and off for another year.<sup>(18)</sup> AT this time, she realized that she did not want people to perceive her as a drug user or to accept her as a friend based on drug use.<sup>(19)</sup> In 1999 at age 19, she moved overseas with her family.<sup>(20)</sup> She did not smoke marijuana or use any other drug during this time.<sup>(21)</sup> When she returned from overseas, she resumed smoking marijuana occasionally.<sup>(22)</sup> She last smoked marijuana in April 2002.<sup>(23)</sup> She decided to quit smoking this drug because she did not want her life to proceed in a direction of drug use or as a reason for friendship.<sup>(24)</sup>

When Applicant was 18 years old, the police arrested her, and charged her with driving under the influence (DUI), possession of drug paraphernalia, under age consumption, and underage consumption while driving.<sup>(25)</sup> She pled guilty to possession of drug paraphernalia and under age consumption, misdemeanor offenses.<sup>(26)</sup> The court fined her \$815.00 and sentenced her to community service.<sup>(27)</sup> She has not been arrested for anything since this time.<sup>(28)</sup> She no longer drinks and drives, rather, she ensures there is a designated driver or acts as one herself.<sup>(29)</sup>

Prior to accepting her current full-time and part-time jobs, Applicant worked in several other positions, including waitress, cashier, bartender, supervisory accounting assistant, and computer operator.<sup>(30)</sup> As a bartender, she managed a restaurant's daily money intake for the bar, balanced the bar books and over saw the security of the bar.<sup>(31)</sup> When she worked as the supervisory accounting assistant, she handled many thousands of dollars on a daily basis.<sup>(32)</sup> Her jobs as a cashier and waitress also required her to handle money. The record does not reflect that her employers disciplined her because she mishandled money.

Applicant was terminated from two jobs for tardiness while a high school student, and she was terminated from a job in May 1999 and in August 2001 for tardiness.<sup>(33)</sup> She continues to experience a problem with arriving at work on time.<sup>(34)</sup> She suffers from insomnia and sleep problems, for which she takes medication.<sup>(35)</sup> She and her current boss are working to resolve her tardiness issue.<sup>(36)</sup> She has been doing better.<sup>(37)</sup>

Applicant's supervisor believes that she has a great work ethic, is an excellent worker, is the best administrator at the work site, and does not gossip.<sup>(38)</sup> Based on his recommendation, she received a promotion and an out-of-cycle pay raise.<sup>(39)</sup> He considers her an asset to the company.<sup>(40)</sup> He has even entrusted her to house and pet sit for him.<sup>(41)</sup> He knows about her past drug use and DUI.<sup>(42)</sup> Her supervisor from her part-time position describes her as a good employee who knows what to do and does it, is personable with customers, and is very trustworthy.<sup>(43)</sup> Four co-workers wrote favorable letters of recommendation.<sup>(44)</sup>

Applicant's family and friends describe her as trustworthy, reliable, dependable, responsible, and hard-working.<sup>(45)</sup> Although their knowledge of her drug use is limited, none have seen her use drugs since April 2002.<sup>(46)</sup> She no longer associates with the friends with whom she did drugs.<sup>(47)</sup>

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. 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 Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (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. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(48)</sup> The government has the burden of proving controverted facts.<sup>(49)</sup> The burden of proof is something less than a preponderance of the evidence.<sup>(50)</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.<sup>(51)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(52)</sup>

No one has a right to a security clearance<sup>(53)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(54)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(55)</sup> 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.<sup>(56)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

**Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulation could indicate that the person may not properly safeguard classified information.**

**Drug Involvement - Guideline H: 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.**

## CONCLUSIONS

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

The government has established its case under Guideline E. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.4. (*Personal conduct ... that increases an individual's vulnerability to coercion, exploitation or duress...*), PC DC E2.A5.1.2.5. (*A pattern of dishonesty or rule violations*), and PC DC E2.A5.1.2.6. (*Association with persons involved in criminal activity*) apply. Applicant's use of numerous illegal drugs over a period of time and her DUI arrest, increases her vulnerability to coercion, exploitation or duress by people seeking to obtain classified information. By using drugs prohibited by law with her friends, she and they engaged in a criminal activity with potentially serious legal and physical consequences. Her tardiness to work reflects a pattern of rule violation.

I considered all the Personal Conduct Mitigating Conditions (PC MC) and conclude that PC MC E2.A5.1.3.5. (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) applies. While she is not proud of her past drug use, Applicant has openly acknowledged to family members and her employer that she used drugs when she was young. Her friends have known about her drug use for a long time. She has changed her life style. She works two jobs, one a full-time day job. She is a dependable and skilled employee. Her long work hours provide little time for extracurricular activities, particularly with friends who prefer to drink and use drugs in the evening hours. She spends her spare time helping care for her elderly grandparents, reading, and exercising. She drinks with discretion. Her ability to be open about her past reduces her vulnerability to coercion, exploitation and duress. Her tardiness problem would not increase her vulnerability to coercion, exploitation or duress as it is an issue she is working to resolve.

PC MC E2.A5.1.3.7. (*Association with persons involved in criminal activities has ceased*) applies. Applicant no longer associates with the individuals who provided her access to cocaine, LSD, and amphetamines, and has not for the last six or seven years. In 2002, she decided that she did not want to develop friendships based on smoking marijuana. She actively chose to distance herself from friends such as these. She has new friends who do not use marijuana or any other drugs. She has successfully mitigated and overcome the government's concerns under Guideline E. Accordingly, allegations 1.a, 1.b, and 1.d. through 1.l. are found in favor of Applicant.

The government has established its case under Guideline H. Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*Any drug abuse*<sup>(57)</sup>), and DI DC E2.A8.1.2.2. (*Illegal drug possession, including cultivation, process, manufacture, purchase sales, or distribution*) apply. Applicant used LSD, cocaine, amphetamines and marijuana, all illegal drugs under the Control Substances Act of 1970, on and off for several years. To use these drugs, she had to possess them. She also purchased some of the drugs she used. One two occasions, she used prescription drugs, which had not been prescribed to her by a physician, but had been given to her by a friend. Her conduct clearly falls under these disqualifying conditions.

I considered all the Drug Involvement Mitigating Conditions (DI MC) and conclude that DI MC E2.A8.1.3.1. (*The drug involvement was not recent*), and DI C E2.A8.1.3.3. (*A demonstrated intent not to abuse any drugs in the future*) apply. As a teenager, Applicant experimented with and used a variety of powerful drugs, including LSD, cocaine, and amphetamines, over a period of four years. She used these drugs for recreational purposes, not on a weekly or daily basis. In late 1998, before she reached age 20, she decided to discontinue her drug experimentation, with the exception of marijuana. She continued to smoke this drug until she moved overseas in 1999. While she ceased using marijuana for two years, she resumed smoking it on occasion with her friends upon her returned home in 2001. She soon realized that she wanted to direct her life in a more positive way and away from individuals who required smoking marijuana as a criteria for friendship. She ceased smoking marijuana in 2002. At the hearing and in her signed statement, she credibly declared an intent not to use drugs in the future.

Applicant's arrest in 1998 for DUI and possession of drug paraphernalia is over seven years old. She not been arrested since. She has changed her attitude towards alcohol and its consumption. She now refuses to drive if she has been drinking, preferring to ride with a designated driver. She often volunteers to be the designated driver when she goes drinking with her friends. She has mitigated and overcome the government's concerns under Guideline H. Accordingly, allegation 2.a is found in favor of Applicant.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case, that Applicant has shown a significant change in her behavior and attitude towards drugs, drinking alcohol and work. She has developed into a dependable, trustworthy and honest person with an excellent work ethic. She is a responsible adult who pays her bills and cares for her elderly grandparents. She has recognized the harm her continued drug use could do to her. She stopped using powerful drugs by age 20, and marijuana a few years later. She has put her youthful indiscretions behind her. While tardiness has been a significant problem for her, none of employers ever disciplined her for job performance. She has worked jobs which require her to handle substantial amounts of money without any indication of problems with allegations of theft or misuse. Except for her tardiness, she has always been a very good employee capable of handling significant responsibility. She is working to resolve her insomnia problem and her tardiness issue. She is making progress. The facts that she does not gossip at work, gets the job done, and does it well, are positive character traits. I find that she has overcome the government's case. Accordingly, for the reasons stated, I find that it is clearly consistent with the national interest to grant a security clearance to Applicant.

## **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 E (Personal Conduct): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Paragraph 2, Guideline H (Drug Involvement): FOR APPLICANT

Subparagraph 2.a: For Applicant



## **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry

Administrative Judge

1. Tr. at 129-130.
2. Applicant's Response to SOR, dated May 27, 2005, at 1-2.
3. Government Exhibit 1 (Security Clearance Application, dated February 12, 2003) at 2.
4. *Id.*
5. *Id.* at 3.
6. *Id.* at 1.
7. *Id.* at 1-2.
8. *Id.* at 5.
9. Tr. at 125.
10. *Id.* at 100.

11. *Id.* at 60, 72, 122.
12. *Id.* at 53, 82; Government Exhibit 1, *supra* note 3, at 10.
13. Tr. at 122.
14. *Id.* at 52, 58-60, 69, 83, 94-95; Government Exhibit 5 (Applicant's signed statement, dated November 5, 2003) at 3.
15. Tr. at 52, 96-97; Government Exhibit 5, *supra* note 14, at 4-5.
16. Tr. at 119-120; Government Exhibit 5, *supra* note 14, at 4.
17. Tr. at 98-99; Government Exhibit 5, *supra* note 14, at 5.
18. Tr. at 96-97; Government Exhibit 5, *supra* note 14, at 5.
19. Tr. at 96-97.
20. *Id.* at 95.
21. *Id.* at 66, 95.
22. *Id.* at 95.
23. *Id.* at 95, 108-109; Government Exhibit 5, *supra* note 14, at 5.
24. Tr. at 95, 108-109.
25. Government Exhibit 5, *supra* note 14, at 3; Government Exhibit 4 (Plea Agreement signed by Applicant on August 27, 1998).
26. Government Exhibit 4, *supra* note 24, at 9; Government Exhibit 5, *supra* note 14, at 3.
27. Government Exhibit 5, *supra* note 14, at 3-4; Government Exhibit 4, *supra* note 24, at 5-6.
28. Government Exhibit 3 (United States Department of Justice, Federal Bureau of Investigation, Criminal Records Report, dated January 28, 2003) at 2.
29. Tr. at 107.
30. Government Exhibit 1, *supra* note 3, at 2-5.
31. Tr. at 80.
32. *Id.* at 66.
33. *Id.* at 92, 111-114; Government Exhibit 1, *supra* note 3, at 7-8, 10; Government Exhibit 5, *supra* note 14, at 1-2.
34. Tr. at 36, 100-102.
35. *Id.* at 102.
36. *Id.* at 42.
37. *Id.* at 42.
38. *Id.* at 30, 42; Applicant Exhibit F-H (Performance Evaluation for 2003 and promotion recommendation).

39. Tr. at 32-33.
40. *Id.* at 34.
41. *Id.* at 36.
42. *Id.* at 37, 43.
43. *Id.* at 46.
44. Applicant Exhibits B-E (letters of recommendation).
45. Tr. at 52, 58, 65, 67-68, 80, 82.
46. *Id.* at 52, 58-59, 60, 69, 75, 83, 85.
47. *Id.* at 54-55, 106, 123-124.
48. ISCR Case No. 96-0277 (July 11, 1997) at 2.
49. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
50. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
51. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
52. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
53. *Egan*, 484 U.S. at 531.
54. *Id.*
55. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
56. Executive Order No. 10865 § 7.
57. Drug abuse is defined in E2.A8.1.1.2.1 as including drugs materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970.