

DATE: January 31, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10439

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Fahryn E. Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of alcohol abuse and her omission of relevant information from a 2002 security clearance application raise security concerns. Applicant's alcohol consumption gradually began to decrease in 2000. She has abstained entirely since January 2005. She has mitigated the alcohol consumption security concern. The security concern generated by the omissions from her security clearance application, however, remains unmitigated. Clearance is denied.

STATEMENT OF THE CASE

On December 15 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating it was unable to find it clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR alleged security concerns under Guideline G, alcohol consumption, and Guideline E, personal conduct.

Applicant answered the SOR on January 7, 2006 and elected to have a hearing before an administrative judge. Department Counsel moved to amend the SOR on September 13, 2006. The case was assigned to me on September 26, 2006, and I scheduled a pre-hearing conference for October 31, 2006 to address Department Counsel's motion. During the pre-hearing conference, Applicant did not object to the motion, whereupon I granted it. Applicant then admitted each of the supplementary allegations.

Consistent with the agreement of the parties at the pre-hearing conference I convened a hearing on November 21, 2006. At the hearing, I received 15 government exhibits, and five Applicant exhibits, in addition to her testimony. DOHA received the transcript (Tr.) on December 8, 2006.

FINDINGS OF FACT

I have incorporated Applicant's admissions into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 37-year-old, divorced woman with three teenage children. She attended college for two years in the early 1990s, earning 18 credits toward graduation. She served in the Army from 1996 to 1999 where she worked as a heavy equipment mechanic. She has worked in this field for various contractors since her discharge from the Army in 1999. According to one of her supervisors, she is "well organized, efficient, and has an excellent rapport with the rest of [her] team."⁽²⁾ In June 2004, she received a certificate of appreciation from the Army for her superior professionalism and technical expertise.⁽³⁾

Applicant has a drinking problem. She began drinking alcohol in approximately 1982, at age 13. For the next 18 years, she drank to the point of intoxication, on average, three times per month. Her use peaked while in the Army. By 1999, she was drinking six to 12 beers per day.⁽⁴⁾

In 1992, Applicant was charged with disturbing the peace after a dispute with her boyfriend, the father of her two youngest children. The state declined to prosecute.⁽⁵⁾ In 1993, she was charged with trespass, resisting arrest, abducting a relative, and being drunk and disorderly, after another domestic dispute. The charges were later nolle prossed.

In 1996, shortly before joining the Army, Applicant married her boyfriend. Their problems persisted. In July 1997, while home on leave, she was charged with assault after another alcohol-related domestic dispute. The charge was later dismissed.

By 1997, Applicant's alcohol consumption began to affect her Army career. In approximately September 1997, she received non-judicial punishment for missing morning formation due to the lingering effects of the prior night's intoxication.⁽⁶⁾ Subsequently, she self-enrolled in alcohol counseling, and satisfactorily completed it in June 1998.⁽⁷⁾

One night in February 1999, Applicant "could not keep [her] car on the road"⁽⁸⁾ due to intoxication. She reported this incident to her supervising sergeant, and ultimately received non-judicial punishment for overindulgence in alcohol, and was ordered to obtain an alcohol evaluation.⁽⁹⁾ On February 26, 1999, a physician diagnosed her with alcohol dependence, and referred her to a 30-day inpatient program.⁽¹⁰⁾ She did not abuse alcohol while enrolled in this program, contrary to what was alleged in subparagraph 1.f.

On June 15, 1999, Applicant successfully completed the inpatient program. She was then required to attend outpatient counseling three times per week, and Alcoholics Anonymous (AA) meetings.⁽¹¹⁾ Four days later, on June 19, 1999, she failed a urinalysis, testing positive for cocaine.⁽¹²⁾ When initially confronted about the failed urinalysis, she denied using cocaine.⁽¹³⁾ Subsequently, she was charged with false swearing and wrongful use of cocaine, and received a non-judicial punishment consisting of a demotion, and the requirement to perform 45 days of extra duty.⁽¹⁴⁾

On September 9, 1999, Applicant deserted the Army, and her status was changed from "present for duty" to "absent without official leave"(AWOL).⁽¹⁵⁾ Approximately three weeks later, while on AWOL status, the administrator of the Army's alcohol abuse program, that she had attended before the desertion, characterized her as a rehabilitative failure, and released her from the program.⁽¹⁶⁾ In October 1999, she returned to the Army, whereupon she received a General Discharge under Other Than Honorable Conditions.⁽¹⁷⁾

After leaving the Army, Applicant's alcohol use gradually began to decrease. From 2000 to 2004, she drank it on only five occasions, using moderately each time.⁽¹⁸⁾ In August 2004, a certified chemical dependency counselor diagnosed her with alcohol dependence in early remission.⁽¹⁹⁾ The counselor concluded that no treatment was warranted.⁽²⁰⁾ She has abstained from alcohol completely since January 1, 2005.⁽²¹⁾

Applicant completed a security clearance application (SF 86) on November 22, 2002. In response to Questions 11 and 17, she mischaracterized the nature of her discharge from the Army, describing it as "General" instead of "General Under Other Than Honorable Conditions," and embellished her rank at the time of discharge. Also, she failed to disclose the non-judicial punishments she received in 1997 and 1999, as required by Question 25.

At the hearing, Applicant stated that she did not list her discharge status on the SF 86 because it was her intention to have it changed to an honorable discharge shortly after completing it. ⁽²²⁾ Also, she testified that she did not list the 1997 non-judicial punishment because "[i]t probably didn't just come to mind at the time" ⁽²³⁾ she completed the SF 86, and asserted the 1999 non-judicial punishment was listed, as required. ⁽²⁴⁾

Applicant's use of cocaine in 1999 that led to the failed drug test was one of approximately five episodes of cocaine usage from 1984 to 1999. ⁽²⁵⁾ During that time, she also used marijuana approximately once or twice per week. ⁽²⁶⁾ She did not disclose this drug use on the SF 86, as required, in response to Question 27. ⁽²⁷⁾ At the hearing, she admitted falsifying this information, explaining that she "did not put that on there because people that [she works] with see that and [she] did not feel that it [was] any of their business. . . ." ⁽²⁸⁾

Applicant answered "Yes" to Question 19 (*Your Medical Record - In the last 7 years, have you consulted a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition? Did the mental health related consultation(s) involve only marital, family, or grief counseling not related to violence by you?*). She also answered "Yes" to Question 30 (*Your Use of Alcohol - In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?*).

Applicant also failed to disclose the 1997 domestic-related assault charge on the SF 86 in response to Question 26. ⁽²⁹⁾ She provided a contradictory explanation for this omission at the hearing. ⁽³⁰⁾

Question 31 of the SF 86 required Applicant to disclose whether the government had ever investigated her background and/or granted her a security clearance. She was instructed to answer "No" if she was unaware of whether she had ever been investigated or cleared. She held a clearance while in the Army, ⁽³¹⁾ but was unaware of it. The only record evidence of her clearance was a commander's report she had not seen prior to the hearing. ⁽³²⁾

Question 35 of the SF 86 required Applicant to disclose any repossessions within seven years of its completion. She failed to list the 1999 repossession of a car. She testified that she believed she did not have to list it, because her husband with whom she had co-signed the car note, was the one who failed to make the payments. ⁽³³⁾

Question 37 of the SF 86 required Applicant to disclose any unpaid judgements entered against her, within seven years of its completion, that were currently unpaid. She failed to list a judgment against her for a delinquency owed to a former landlord. She testified at the hearing that she had disputed the underlying delinquency, but was unaware a judgment had been entered. ⁽³⁴⁾

Applicant's wages were garnished in June 2005 for a child support arrearage. She originally grew delinquent on her child support payments in approximately 2001 after a three-month period of unemployment. ⁽³⁵⁾ Her wages had originally been garnished before 2005 through another state. When she moved to her current state of residence, the garnishment was reissued, as alleged in subparagraph 2.j. I find that subparagraph 2.j does not constitute a security concern.

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 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.

Because the entire process is a 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 G - Alcohol Consumption: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Guideline E - Personal Conduct: Concern 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"⁽³⁶⁾ 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.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting 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 proceeding. 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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described above, I conclude the following with respect to each allegation set forth in the SOR.

Alcohol Consumption

Applicant's chronic alcohol abuse generated several criminal charges, contributed to her General Discharge Under Other Than Honorable Conditions from the Army, and prompted a physician, in 1999, to diagnosed her with alcohol dependence. Alcohol Consumption Disqualifying Condition (AC DC) 1 (*Alcohol-related incidents away from work*,

such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use), AC DC 3 (Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence), and AC DC 5 (Habitual or binge consumption of alcohol to the point of impaired judgment) apply.

In 2000, Applicant began reducing her alcohol consumption. She drank only five times over the next four years. A therapist evaluated her in 2004 and concluded that although she was alcohol dependent, the problem was in remission, and no treatment was necessary. She has not drunk any alcohol since January 2005. Alcohol Consumption Mitigating Condition (AC MC) 1 (*The problem occurred a number of years ago and there is no indication of a recent problem*), and AC MC 3 (*Positive changes in behavior supportive of sobriety*) apply.

Personal Conduct

Applicant's criminal activity throughout the 1990s, and her misbehavior while in the Army generates a security concern under Personal Conduct Disqualifying Condition (PC DC) 1 (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*). Her SF 86 omissions raise the issue of whether PC DC 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.

Applicant's legal problems stemmed from alcohol abuse in tandem with a troubled domestic relationship. As her personal life stabilized, she ceased having these problems. She has been divorced for more than five years, and has not used for more than two years. Personal Conduct Mitigating Condition (PC MC) 5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) applies to subparagraphs 2.c through 2.i.

Applicant's affirmative answers to Question 19 and Question 30 regarding her mental health treatment and alcohol treatment, respectively, were appropriately responsive. I conclude she did not falsify them as alleged in subparagraphs 2.m and 2.o.

Judging by the plain language of Question 31, it is not inconceivable that a security clearance applicant may be unaware of either having been investigated for a clearance, or granted one in the past. Consequently, Applicant's contention that she was unaware she had possessed a clearance in the past is reasonable absent any evidence to the contrary. She did not falsify Question 31, as alleged in subparagraph 2.p.

Subparagraph 2.s and 2.t. allege that Applicant failed to disclose debts that had either been 180 days delinquent within 7 years of her completion of the SF 86, or were currently 90 days delinquent at the time she completed the SF 86. Neither question identifies the debts that allegedly should have listed. Although an SOR allegation need not be drafted with the precision of a criminal indictment,⁽³⁷⁾ it must, at minimum, be drafted precisely enough to enable an applicant to prepare a response. Subparagraphs 2.s and 2.t fail to meet this minimum threshold, therefore, her responses to these questions do not constitute a security concern.

Applicant's explanation for failing to disclose her drug use history and 1999 drug charge from the SF 86 does not mitigate the conduct. Conversely, it reflects a failure to be candid with the government at all times, and a propensity to elevate personal expedience over the requirements of the security clearance adjudication process. Also, it fatally undermines her credibility with respect to the omissions concerning her military record, her 1997 assault charge, the 1999 automobile repossession, and the 1999 judgment. PC DC 2 applies to these omissions without mitigation.

Whole Person Concept

Applicant has abstained from alcohol since 2005, and has not been charged or arrested for any crimes since 1999. These facts, in conjunction with her outstanding job performance constitute strong evidence of rehabilitation. These positive attributes are outweighed by the dishonesty demonstrated by falsifying the SF 86. Consequently, I conclude it is not clearly consistent with the national interest at this time to grant her access to classified information.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.c: 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: For Applicant

Subparagraph 2.g: For Applicant

Subparagraph 2.h: For Applicant

Subparagraph 2.i: For Applicant

Subparagraph 2.j: For Applicant

Subparagraph 2.k: Against Applicant

Subparagraph 2.l: Against Applicant

Subparagraph 2.m: Against Applicant

Subparagraph 2.n: Against Applicant

Subparagraph 2.o: For Applicant

Subparagraph 2.p: For Applicant

Subparagraph 2.q: Against Applicant

Subparagraph 2.r: Against Applicant

Subparagraph 2.s: For Applicant

Subparagraph 2.t: For Applicant

DECISION

In light of all of the circumstances 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. 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 and modified (Directive).
2. Exhibit A, Reference Letter from Chief, Automotive Operations Division, dated November 16, 2006.
3. Exhibit D, Certificate of Appreciation dated June 26, 2004.
4. Exhibit 3, Signed, Sworn Statement, dated September 3, 2004, at 2.
5. Exhibit 8, Court Document, generated September 17, 2003.
6. Answer, dated January 7, 2006 at 3; Tr. 25.
7. Tr. 23, 25.
8. *See* note 3.
9. Tr. 23. The incident with the car did not result in an arrest.
10. Exhibit 13, Patient Intake and Progress Records, dated February 26, 1999 to May 19, 1999; Tr. 25.
11. Answer to subparagraph 1.c, dated January 7, 2006, at 2.
12. Exhibit 11, Commander's Report of Disciplinary or Administrative Action, dated July 21, 1999, at 10.
13. *See* note 4 at 1.
14. *Id.*
15. Personnel Action, dated September 9, 1999, as listed in Exhibit 11, at 7.

16. *See* note 13; Tr. 23.
17. Personnel Action, dated October 8, 1999, as listed in Exhibit 11, at 8.
18. *See* note 4 at 3.
19. Assessment dated August 10, 2004, as included in Exhibit 5.
20. *Id.*
21. Tr. 13.
22. Tr. 50.
23. Tr. 50.
24. Tr. 31.
25. *See* note 4 at 3.
26. *See* note 4 at 4.
27. Exhibit 1, SF 86, dated November 27, 2002, at 8.
28. Tr. 28.
29. *See* note 25.
30. *Cf.* Tr. 54 with Tr. 57.
31. Exhibit 11, Commander's Report of Disciplinary or Administrative Action, dated March 21, 2000, at 3.
32. Tr. 61.
33. Tr. 34, 62.
34. Tr. 35, 63.
35. Exhibit 1, SF 86 dated November 22, 2002, at 3.
36. *See* Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.
37. ISCR Case No. 99-0382 (May 3, 2000).