

KEYWORD: Drugs; Alcohol; Criminal Conduct; Personal Conduct

DIGEST: Applicant failed to disclose her use of drugs as required in a SF 86 she submitted in 2003, and minimized her alcohol/drug involvement during background interviews and at her hearing. She used illegal drugs and alcohol for at least 20 years and was diagnosed as alcohol and drug dependent. Although recovering since 2000, she failed to show she continues her aftercare rehabilitative counseling and that recurrence is not likely. She failed to mitigate the security concerns about her drug use, alcohol abuse, personal conduct, and criminal conduct. Clearance is denied.

CASENO: 04-11013.h1

DATE: 03/22/2006

DATE: March 22, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11013

DECISION OF ADMINISTRATIVE JUDGE

JUAN J. RIVERA

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to disclose her use of drugs as required in a SF 86 she submitted in 2003, and minimized her alcohol/drug involvement during background interviews and at her hearing. She used illegal drugs and alcohol for at least 20 years and was diagnosed as alcohol and drug dependent. Although recovering since 2000, she failed to show she continues her aftercare rehabilitative counseling and that recurrence is not likely. She failed to mitigate the security concerns about her drug use, alcohol abuse, personal conduct, and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On July 21, 2005 the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline H (Drug Involvement), Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant Applicant's security clearance. ⁽¹⁾

On September 8, 2005, Applicant answered the SOR (Answer). Applicant admitted (in certain cases with explanations) the allegations in subparagraphs 1a, 1c, 1d, 1e, 1f, 1g, 1h, 1i, 1j, 1k, 2b, 2d, 3c, 3d, denied the allegations in subparagraphs 1b, 1l, 1m, 1n, 2a, 2c, 2e, 3a, 3b, 3e, 3f, 4a, and 4b, and requested a hearing. The case was assigned to me on October 6, 2005. On November 10, 2005, I convened a hearing at which the government presented 12 exhibits, marked GE 1-12, to support the SOR. ⁽²⁾ GE 1-10 were admitted into evidence and administrative notice was taken of the information contained in GE 11 and 12 (for identification) without objection. Applicant testified and presented five post-hearing exhibits that were admitted without objection and marked AE 1-5. ⁽³⁾ DOHA received the transcript (Tr.) on November 28, 2005.

FINDINGS OF FACT

Applicant admissions are incorporated herein as findings of facts. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of facts:

Applicant is 40 years old, single, and has completed approximately one year of college. In March 2002, she was hired by a defense contractor to work as a meeting planner/coordinator. In March 2003, Applicant was granted an interim secret clearance. As a result of concerns raised by her background investigation, Applicant's interim security clearance was revoked in April 2005. Because of her outstanding duty performance, her employer considers Applicant a crucial element to their continued success, and has supported Applicant's clearance application. (4)

Applicant's father was an alcoholic, and her step father, brother, and members of her extended family abused alcohol and/or used drugs. Applicant testified that as an adolescent, she was a follower, not a leader. Most of her problems arose as a result of her following bad examples, being involved with the wrong people, and making bad choices. She began drinking alcohol as an adolescent, using marijuana as a teenager, and using cocaine at age 20. Initially she was a social drinker/user, consuming alcohol, marijuana and cocaine during weekends, at parties, and during holidays. From age 20 through 35, Applicant's abuse of alcohol and illegal use of drugs escalated with the passage of time until she became alcohol and crack cocaine dependent. From age 30 through 35, she consumed alcohol and illegal drugs at least three times a week, sometimes on a daily basis. Applicant also purchased and sold illegal drugs, and around 1992 experimented with PCP and heroin.

In 1996, Applicant sought rehabilitative treatment to stop her consumption of illegal drugs and alcohol. She failed, however, to follow her treatment plan and was dismissed from the treatment facility. In November 2000, Applicant realized she had a serious drug and alcohol related problem and again sought help. After she stopped using drugs for a number of days in December 2000, Applicant successfully attended a four day detoxification program in her home state.

Not satisfied that she was cured, and afraid of a recurrence, Appellant sought additional long-term drug and alcohol rehabilitation treatment. Applicant claimed that to secure admission/referral into a long-term rehabilitation program she purposely lied and exaggerated her history and consumption of drugs and alcohol. Applicant testified that part of her exaggerations and lies, reflected on her medical records, included: that she began consuming alcohol at age four; consuming alcohol daily; beginning her use of marijuana at age 15; using marijuana daily; using crack cocaine daily from age 20 through 35, and using PCP and heroin.

After her four day detoxification treatment, from December 11, 2000 through January 23, 2001, Applicant successfully attended four other inpatient rehabilitative treatment facilities. On December 12, 2000, a psychiatrist from one of these facilities, diagnosed her with a bi-polar disorder, crack cocaine and alcohol dependency, and marijuana abuse.⁽⁵⁾ Applicant's medical discharge records from one of these facilities, showed that From January 23 through March 22, 2001, Applicant received additional aftercare treatment at another facility, and then continued her aftercare treatment at a live-in facility through December 2001.

Applicant claimed she was successful in her rehabilitation efforts and has been clean and sober, with no relapses, since December 2000. Applicant's assertions are corroborated, in part, by her medical records and letters from four different treatment facilities.⁽⁶⁾ These documents corroborate that, at least up to April 16, 2001, Applicant was clean and sober. There is no evidence Applicant has been involved in any incident related to the consumption of alcohol or drugs since her release from rehabilitative treatment. Applicant claimed that after her release from the live-in facility she attended Alcoholic Anonymous (AA) and/or Narcotics Anonymous (NA) in her home state, until sometime in 2004. To corroborate her testimony, Applicant introduced her third and fourth year medallions from NA showing that she has remained clean and sober.⁽⁷⁾

Applicant has been arrested and/or charged five times. In July 1990, Applicant was arrested for larceny. In August 1990, she was arrested and charged with attempted possession of cocaine, a felony.⁽⁸⁾ Applicant testified she was intoxicated at the time of the August 1990 incident and was arrested primarily because she was disorderly. The charge was later dismissed by the court. In May 1991, she was arrested and charged with uttering paper with a forged endorsement, a felony. The charge was dismissed after she made restitution. Applicant testified she was intoxicated at the time of the incident.⁽⁹⁾ In September 1999, she was charged with the unauthorized use of her step father's car. Applicant was not arrested for this offense, and the charge was dismissed. Finally, in July 2000, she was arrested and charged with second degree assault, disorderly conduct, and reckless endangerment. Applicant indicated she was intoxicated the night before and was suffering from the effects of alcohol at the time of this incident. In July 2000 these charges were dismissed.

In February 2003, Applicant submitted an Office of Personnel Management Security Clearance Application (SF 86) in which she answered "NO" to questions inquiring about her felony arrest record and use of illegal drugs within the preceding seven years. Applicant claimed that, because of her alcohol and drug involvement, she did not know she was ever charged with a felony offense. Applicant testified the first time she realized she had been charged with a felony offense was when she received the SOR.

Regarding her failure to disclose her use of illegal drugs, Applicant initially testified she had no explanation for her failure to disclose her 15-year use of illegal drugs.⁽¹⁰⁾ Later during her testimony, Applicant claimed, for the first time, that a corporation facility security officer (FSO) advised her to be careful with her answers. Applicant took that warning as a suggestion to change her answers to the SF 86 questions asking about her criminal history and drug abuse and omitted the information from the SF 86.⁽¹¹⁾

After falsifying the SF 86, Applicant continued to minimize the extent of her drug and alcohol history. In her November 2003 statement, Applicant stated she never purchased or sold drugs, that she never used cocaine powder, that she never used PCP or heroin, and that she used crack cocaine and marijuana only three or four times a year. In her August 2004 statement, Applicant admitted to purchasing and selling drugs, using marijuana since 1983, and using marijuana laced with cocaine and another drugs. At the hearing, Applicant admitted to using crack cocaine two to three times a week prior to her attending detoxification treatment, and probably using PCP and heroine. Applicant's medical/treatment records reflect the true extent of her alcohol and drug abuse. She had a 20 year history, from approximately age 15 to age 35, of alcohol and illegal drug use that culminated with her dependence on alcohol and crack cocaine, and marijuana abuse.

Applicant presented character reference letters provided by Applicant's general manager and two friends. The general manager's letter is noteworthy. It indicates Applicant has been employed by his corporation since 2002. During that time, she has been characterized as a dependable and trusted employee with an exemplary duty performance.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's suitability for access to classified information. The administrative judge has to take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, [\(12\)](#) and the whole person concept. [\(13\)](#) The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the granting or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), Guideline H (Illegal Drugs), and Guideline J (Criminal Conduct).

BURDEN OF PROOF

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest [\(14\)](#) for an Applicant to either receive or continue to have access to classified information. The government has the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The responsibility then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a right to a security clearance, the Applicant

carries a heavy burden of persuasion.⁽¹⁵⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest to ensure each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access to classified information in favor of protecting national security.⁽¹⁶⁾

CONCLUSIONS

Guideline E (Personal Conduct). Personal conduct is always a security concern because it asks the ultimate question - whether a person's past conduct instills confidence the person can be trusted to properly safeguard classified information. An applicant's conduct is a security concern if it involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such behavior could indicate that the person may not properly safeguard classified information.⁽¹⁷⁾ Here, the government's concern stems from Applicant's falsification of her SF 86 by failing to disclose that she was charged with two felony offenses (larceny in 1990, and uttering paper with forged endorsement in 1991), and her illegal drug use from about 1996 to at least 2000.

In her answer, Applicant admitted she was arrested in 1990 and charged with shoplifting, but denied that she was charged with a felony larceny offense. She averred that she did not know she was ever charged with a felony offense until she received the SOR. The government failed, however, to present evidence to establish the controverted fact that Applicant was indeed charged with a felony larceny offense.⁽¹⁸⁾

Concerning the May 1991 arrest and charge for uttering paper with forged endorsement, GE 9 shows Applicant was charged with a felony. Applicant admitted she was arrested and charged. She claimed, however, that she was intoxicated at the time of the arrest and was not aware of being charged with a felony offense until she received the SOR.⁽¹⁹⁾ I cannot discount Applicant's explanation for her actions in light of her drug/alcohol problems that arguably clouded Applicant's recollection of the incidents. In light of Applicant's lifestyle at the time of the offense, I conclude she was not aware she was charged with a felony offense when she answered SF 86 Question 21.

Applicant deliberately failed to disclose her illegal use of cocaine, crack cocaine, and marijuana. Furthermore, she did so after being warned by one of the corporation's FSOs to be careful with her answers in the SF 86. Applicant elected to take the warning as a suggestion to hide her past use of illegal drugs instead of being truthful in her answers. Her omissions were deliberate and with the intent to mislead the government about information relevant and material to her suitability to hold a clearance. Based on the facts and circumstances, Disqualifying Condition (DC) 2⁽²⁰⁾ and DC 4⁽²¹⁾ are applicable and must be considered here.

I have considered all the Personal Conduct Mitigating Conditions⁽²²⁾, and find that none apply. After falsifying the SF 86, Applicant continued to minimize the extent of her drug and alcohol history, providing additional piecemeal information in two subsequent statements and at the hearing. In light of all the facts and circumstances, I conclude Applicant's falsification is relatively recent and not an isolated incident. Furthermore, the pressures that led her to falsify the SF 86, her desire to cover up her drug abuse/dependency, are still present in her life. As such, she is likely susceptible to influence, pressure, or coercion to cover up her past behavior. Accordingly, I conclude Guideline E against the Applicant.

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.⁽²³⁾ The government established its case under Guideline G by showing that Applicant consumed alcohol to excess and to the point of addiction.⁽²⁴⁾ She was also arrested multiple times because she exercised exceedingly poor judgment when drinking. Applicant's drinking was addressed through two periods of treatment. Guideline G Disqualifying Condition (DC) 1,⁽²⁵⁾ and DC 3,⁽²⁶⁾ DC 4,⁽²⁷⁾ and DC 5⁽²⁸⁾ apply here.

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. Such conduct may also be criminal and indicative of a disregard for rules and regulations in place to protect national interests.⁽²⁹⁾ The government established its case under Guideline H by showing that Applicant used marijuana, cocaine, and crack cocaine, with varying frequency, to include daily, from 1985 until around December 2000; and that Applicant purchased and sold drugs. Further, the government established that Applicant received drug rehabilitation treatment at several recognized drug treatment facilities, and was diagnosed by a physician/psychiatrist as crack cocaine dependent, and a marijuana abuser. Guideline H DC 1,⁽³⁰⁾ DC 2,⁽³¹⁾ DC 3,⁽³²⁾ and DC 4⁽³³⁾ apply.

In 2001, Congress passed 10 U.S.C. 986. The statute, in its pertinent part, prohibits the Department of Defense from granting or continuing a security clearance for any applicant who is an unlawful user of, or is addicted to a controlled substance (as defined by the Controlled Substances Act (21 U.S.C. 802)). I find that the government evidence failed to establish that, at the time of the hearing, Applicant was an unlawful user, or addicted to a controlled substance. I conclude 18 U.S.C. 986, as it relates to Guideline H, is not applicable to this case.

Applicant presented evidence that indicates she has not consumed alcohol or illegal controlled substances since December 2000. However, considering her long history of substance abuse, the nature and seriousness of her dependency, the numerous rehabilitation programs that she attended between December 2000 and December 2001, her failure to participate in any aftercare programs since approximately February 2005, and the fact that she minimized her behavior, I find none of the Guideline G and Guideline H mitigating conditions apply.

Guideline J (Criminal Conduct). A history or pattern of criminal conduct is a security concern because it may indicate an unwillingness to abide by rules and regulations, and may show the applicant to be lacking in judgment, reliability and trustworthiness.⁽³⁴⁾ The government established its case under Guideline J by showing that Applicant was arrested and/or charged with criminal offenses in July and August 1990, May 1991, September 1999, July 2000, and that she falsified her SF 86 (as discussed under Guideline E, above). I conclude Guideline J DC 1⁽³⁵⁾ and DC 2⁽³⁶⁾ apply.

I have considered all Criminal Conduct Mitigating Conditions⁽³⁷⁾ and find that none apply. At the time of the falsification, Applicant was 38 years old, and by her own account, had been clean and sober for approximately three years. Her actions cannot be attributed to the influence of alcohol or drugs. Applicant's falsification is relatively recent and her conduct is aggravated by her continued minimization of her history of drug use and dependency in her two statements and at the hearing. Under the totality of the circumstances, I find Applicant's criminal behavior is not isolated, and that she has not demonstrated clear evidence of successful rehabilitation. Furthermore, the pressures that led her to falsify the SF 86, her desire to cover up her drug abuse/dependency, are still present in her life. Guideline J is decided against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. A fair and commonsense assessment⁽³⁸⁾ of the record before me reflects a person who has tried very hard to overcome her past problems, but is not there yet. Applicant failed to mitigate the government's concerns about her ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude that it is not clearly consistent with the national interest to grant Applicant's request for a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Drug Involvement (Guideline H) AGAINST THE APPLICANT

Subparagraphs 1.a - m Against the Applicant

Subparagraph 1.n For the Applicant

Paragraph 2, Alcohol Consumption (Guideline G) AGAINST THE APPLICANT

Subparagraphs 2.a - e Against the Applicant

Paragraph 3, Criminal Conduct (Guideline J) AGAINST THE APPLICANT

Subparagraphs 3.a - e Against the Applicant

Subparagraph 3.f For the Applicant

Paragraph 4, Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 4.a For the Applicant

Subparagraph 4.b 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 the Applicant. Clearance is denied.

Juan J. Rivera

Administrative Judge

1. Required by Executive Order 10865, Safeguarding Classified Information Within Industry (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (Jan. 2, 1992) (Directive), as amended.
2. Government Exhibit (GE) 10 is the list of the government exhibits.
3. The government's response to Applicant's post-hearing submission was marked as Appellate Exhibit 1.
4. AE 3.
5. GE 5.
6. GE 4, 5, 7 and 8.
7. AE 1 and 2.
8. GE 2, Applicant's November 6, 2003 statement.
9. Tr. 97-98.

10. Tr. 57.

11. Tr. 105.

12. Directive, Section 6.3. 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: the nature and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the age of the applicant; the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation; and the probability that the circumstances or conduct will continue or recur in the future.

13. Directive, E2.2.1.

14. See Department of the Navy v. Egan, 484 U.S. 518 (1988).

15. *Id.*, at 528, 531.

16. See Egan; Directive E2.2.2.

17. Directive, E2.A5.1.1.

18. In Maryland, larceny is considered a felony if/when the value of the goods stolen is to the value of \$100 or more. MD Code, Section 7-104.

19. Tr. 98.

20. Directive, 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;

21. Directive, E2.A5.1.2.4. Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;

22. Directive, E2.A5.1.3.

23. Directive, E2.A7.1.1.

24. Applicant was diagnosed as alcohol dependent by a physician and at the different rehabilitative treatment institutions she attended.

25. Directive, E2.A7.1.2.1. 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;

26. Directive, E2.A7.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

27. Directive, E2.A7.1.2.4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

28. Directive, E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;

29. Directive, E2.A8.1.1.1.

30. Directive, E2.A8.1.2.1. Any drug abuse.

31. Directive, E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;
32. Directive, E2.A8.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
33. Directive, E2.A8.1.2.4. Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;
34. Directive, E2.A10.1.1.
35. Directive, E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
36. Directive, E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
37. Directive, E2.A10.1.3.
38. Directive, E2.2.3.