

KEYWORD: Criminal Conduct; Alcohol; Personal Conduct

DIGEST: Applicant was arrested four times between 1996 and 2002. Three of the arrests were for alcohol or drug-related offenses. She also deliberately falsified answers to her security clearance application (SF 86) and statements to a government investigator. Applicant failed to mitigate the resulting security concerns about her criminal conduct, alcohol consumption, and personal conduct. Clearance is denied.

CASENO: 05-02373.h1

DATE: 03/28/2006

DATE: March 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02373

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrested four times between 1996 and 2002. Three of the arrests were for alcohol or drug-related offenses. She also deliberately falsified answers to her security clearance application (SF 86) and statements to a government investigator. Applicant failed to mitigate the resulting security concerns about her criminal conduct, alcohol consumption, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding ^(U) it is clearly consistent with the national interest to give Applicant a security clearance. On July 29, 2005, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline J (criminal conduct), Guideline G (alcohol), and Guideline E (personal conduct). Applicant timely answered the SOR, and requested a hearing.

The case was assigned to me on September 19, 2005, and I convened a hearing on October 21, 2005. The parties appeared as scheduled, and Department Counsel presented the testimony of one witness and introduced eight exhibits (GE 1 through 8) in support of the SOR. Applicant testified in her own behalf, and submitted three documents (AE A - C). DOHA received the transcript (Tr) on November 3, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is a 50-year-old pipefitter employed by a defense contractor for work at a U.S. Navy shipyard, where she has

worked since June 2001. On July 10, 2003, Applicant submitted a security clearance application (SF 86) to obtain a clearance for access to ships and submarines on which her employer wanted her to work. She was initially given a blank form to fill out and allowed two weeks to obtain the information she would need in response to the questions therein. She submitted a completed form to her supervisor, who then had the information Applicant provided entered into an electronic version of the SF 86. The form was then printed and presented to Applicant, who was allowed to review the entire form for accuracy. She then signed the form, thereby declaring the information in the form was true and accurate.

The ensuing investigation of Applicant's background revealed she had been arrested four times between 1996 and 2002. Each time Applicant was arrested, she was taken to jail. Her first arrest occurred on September 12, 1996. Police were called to her home because Applicant and her teenage daughter had been arguing. The argument became physical when Applicant grabbed her daughter by the arm, resulting in the girl's arm being scratched and bruised. The girl filed charges and police took Applicant into custody. She was charged with two counts of assault and battery on a family member. Available information does not reflect a disposition of these charges.

On April 21, 2000, Applicant was arrested and charged with possession of a dangerous controlled substance (cocaine) and with being drunk in public. Applicant had been drinking at a bowling alley and was detained by police after she left and was about to get in her car. She was transported to jail, and as she was being processed, a pipe used for smoking crack cocaine fell out of her bra. It was then determined Applicant's jacket had cocaine residue in it, and the aforementioned drug charge was added. On October 13, 2000, Applicant pleaded guilty to both charges. The court withheld judgment, but Applicant was fined and ordered to undergo drug screening and a drug treatment program to be completed in one year.

On November 18, 2000, Applicant was arrested and charged with driving under the influence of alcohol (DUI), refusing a blood-alcohol test, and driving on a suspended or revoked license. She was driving home from her brother's birthday party, where she admits to having consumed alcohol but denies being intoxicated. Around this time, in connection with her October 2000 guilty plea, she also tested positive for cocaine. The October 2000 sentence was continued, and she eventually completed the terms of her sentence in March 2002, whereupon the drug charges were dismissed.

Applicant's last known arrest was on October 18, 2002. Police observed Applicant in an intoxicated state as she tried to hail a taxi. They took her into custody and held her in jail overnight. She later pleaded guilty to being drunk in public and paid a fine.

In response to question 24 of Applicant's July 2003 SF 86, which asked if Applicant had ever been arrested offenses related to drugs or alcohol, Applicant answered "yes," but listed only her April 2000 arrest for cocaine possession. She failed to also list the drunk in public charge from the same arrest or her DUI charge from November 2000. In response to question 26, which asked if in the prior seven years she had been arrested or charged with any other offenses not required to be listed by other questions, Applicant answered "yes," and listed her October 2002 drunk in public arrest, but failed to list her arrest in September 1996 for assault and battery of a family member. In response to question 27, which asked if she had used any illegal drugs during the prior seven years, Applicant answered "yes," and disclosed she had used cocaine three times between December 1999 and April 2000.

On May 27, 2004, Applicant was interviewed by an investigator from the Federal Investigative Service (FIS) (2) as part of Applicant's background investigation. Applicant stated she used cocaine once, and that her only use of cocaine occurred in 1999. She also failed to disclose details about her possession of a crack pipe that lead to the aforementioned drug possession charge in April 2000.

Applicant served in the U.S. Army from 1976 until her honorable discharge as a corporal (paygrade E-4). She is described by her supervisor as a quick learner, competent, organized, and states she requires little supervision. She also had a clean record when she worked at the same shipyard from 1991 until 1993, when she resigned to work for a national telecommunications company. She spends most of her spare time caring for her boyfriend, who is ill. Applicant also avers she drinks very little, consisting of perhaps a glass or two of wine with dinner.

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest (3) for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for an applicant to have access to classified information. The applicant must then present sufficient evidence to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, applicants bear a heavy burden of persuasion to comply with the government's compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. (4) The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government. (5)

The Directive sets forth adjudicative guidelines (6) for consideration when evaluating an applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions listed under each adjudicative guideline as may be applicable to the facts and circumstances of each case.

Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. 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 grant 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 J (criminal conduct), Guideline G (alcohol), and Guideline E (personal conduct).

CONCLUSIONS

The government alleged, as part of its basis for denying Applicant's request for clearance, that she consumed alcohol, at times to excess and to the point of intoxication, as recently as May 2004 (SOR ¶ 2.a), and that she was arrested three times for alcohol-related offenses such as being drunk in public and DUI (SOR ¶ 2.b). Applicant denied the former allegation. As to her drinking, there is little available information, aside from Applicant's own testimony, about her actual consumption of alcohol. Specifically, there is no support for the allegation in SOR ¶ 2.a that Applicant drank to excess as recently as May 2004. However, the government presented sufficient information to support SOR ¶ 2.b, thereby raising a security concern, expressed under Guideline G, that 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.⁽⁷⁾ Specifically, these facts support application of DC 1.⁽⁸⁾

By contrast, concerns about alcohol consumption may be mitigated if it can be shown the alcohol related incidents are not recent, do not reflect a pattern of abuse or excess, there are positive changes in support of sobriety, or the person has completed a course of clinical treatment and has been sober for more than 12 months.⁽⁹⁾ On this last point, Applicant has never been diagnosed as alcohol dependent, referred for treatment, or advised to abstain from alcohol. As to recency, Applicant's last alcohol-related arrest was in 2002, and she claims she now drinks only in moderation. However, as discussed under Guideline E, below, her truthfulness about adverse information in her background is reasonably in question. Absent corroborating information to support her claims of moderation, I am unwilling to conclude such alcohol-related incidents as these will not occur in the future. In light of all the information on this issue, I conclude Applicant has failed to mitigate the government's concerns about her alcohol consumption.

The government also declined to grant Applicant a security clearance based, in part, on allegations she was arrested for assault and battery in 1996 (SOR ¶ 1.a), for drug possession and being drunk in public in April 2000 (SOR ¶ 1.b), for DUI, refusing a blood alcohol test, and driving on a suspended license in November 2000 (SOR ¶ 1.c), and for being drunk in public in October 2002 (SOR ¶ 1.d). The government has also alleged she violated federal law⁽¹⁰⁾ by deliberately falsifying answers to her July 2003 SF 86 and by making false statements to a government investigator (SOR ¶ 1.e). The government has presented sufficient information to support these reasons for denial of Applicant's request for a security clearance. The government's information raises security concerns addressed in the Directive under Guideline J. A person who is willing to disregard the law may also be willing to disregard procedures and safeguards intended to protect classified information from unauthorized disclosure. A person who is willing to disregard the law may also not possess the requisite judgment, reliability, and trustworthiness expected of one in whom the government trusts its national interests.⁽¹¹⁾ Specifically, Guideline J disqualifying condition (DC) 1⁽¹²⁾ and DC 2⁽¹³⁾ apply here.

The security concerns about criminal conduct may be mitigated if it can be shown the conduct was not recent, was isolated, was the result of external pressures or coercion, was not voluntary, the Applicant was acquitted of the charges, or that there is clear evidence of rehabilitation. ⁽¹⁴⁾ Applicant has failed to present sufficient evidence to show any of these factors apply. Beginning in 1996, she engaged in several different criminal acts, including, as discussed below, deliberate falsification of her SF 86 and her statement to a government investigator in violation of federal law as recently as 2004. While it may be that Applicant no longer drinks or uses illegal drugs, which were factors in three of her arrests, she was not intoxicated when she assaulted her daughter or when she made false statements to the government. Nor can I conclude there is clear evidence of rehabilitation in light of her continued misrepresentation adverse information in her background. I conclude Guideline J against the Applicant.

The government also declined to grant Applicant a clearance because of concerns about her truthfulness and judgment. Applicant denied SOR allegations she deliberately falsified her answer to SF 86 question 24, by failing to disclose two alcohol-related criminal charges (SOR ¶ 3.a), her answer to SF 86 question 26 by failing to disclose her 1996 arrest for assault and battery (SOR ¶ 3.b), her answer to SF 86 question 27, by asserting her last use of cocaine was in April 2000 (SOR ¶ 3.c), and her statement to a government investigator by claiming she only used cocaine once, in 1999, and that she had not used cocaine when she was arrested in April 2000 (SOR ¶ 3.d).

Despite Applicant's denials, the government has presented sufficient information in the form of witness testimony, cross-examination of the Applicant, the Applicant's SF 86, and her written statement to the government investigator, to support these allegations. The facts established by the government's information raise security concerns addressed in the Directive under Guideline E, in that conduct 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. ⁽¹⁵⁾ Specifically, DC 2-⁽¹⁶⁾ and DC 3-⁽¹⁷⁾ apply here.

Having reviewed the listed mitigating conditions under Guideline E, ⁽¹⁸⁾ I conclude none is applicable. Applicant's falsifications were multiple and recent, and not the result of erroneous advice. As to her SF 86, she made no prompt, good-faith effort to correct her SF 86 information before her subject interview. To the contrary, when interviewed by a government investigator, she provided false information about her drug use that directly contradicted information she listed in her SF 86. Applicant claims she could not remember all of her arrests, but I find this claim untenable in light of the fact she was taken into custody each time she was charged with a crime. I conclude Guideline E against the Applicant.

A fair and commonsense assessment ⁽¹⁹⁾ of the entire record before me shows the government properly expressed reasonable doubts about Applicant's suitability to have access to classified information. The SOR was based on sufficient, reliable information about Applicant's arrest record, alcohol consumption, and deliberate falsification of her SF 86 and statements to a government investigator. Such issues bear directly on an applicant's ability to protect classified information, and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant has failed to

provide, I conclude she has failed to overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline J (Criminal Conduct): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

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

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: Against the Applicant

Paragraph 3, Guideline E (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: Against the Applicant

Subparagraph 3.c: Against the Applicant

Subparagraph 3.d: 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.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Background investigations are now conducted by this agency, which is part of the Office of Personnel Management (OPM).
3. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. *See Egan*, 484 U.S. at 528, 531.
5. *See Egan*; Directive E2.2.2.
6. Directive, Enclosure 2.
7. Directive, E2.A7.1.1.
8. 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;
9. Directive, E2.A7.1.3.
10. 18 U.S.C. §1001 makes it a crime to knowingly and wilfully make a false statement or representation to any department or agency of the United States concerning a matter within its jurisdiction. Violation of this statute is punishable by up to five years in jail, a fine, or both.
11. Directive, E2.A10.1.1.
12. Directive, E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
13. Directive, E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
14. Directive, E2.A10.1.3.
15. Directive, E2.A5.1.1.

16. 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.

17. Directive, E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

18. Directive, E2.A5.1.3.

19. Directive, E2.2.3.