

DATE: November 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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P Case No. 06-08760

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**

Ari Becker, Esq.

**SYNOPSIS**

Applicant is 35 years old and works as a claims processor for a company that administers government health care benefits. She has a ten-year history of cocaine and alcohol addiction that created significant financial problems. She has been sober since March 2005 and actively participating in a rehabilitation program. She mitigated the trustworthiness concerns raised by drug involvement, alcohol use, and financial problems. Her eligibility for assignment to a sensitive position is granted.

**STATEMENT OF THE CASE**

On October 13, 2004, Applicant submitted a public trust position application (SF-85P). The Defense Office of Hearings and Appeals(DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Security Personnel Review Program* (Jan. 2, 1992), as amended (Directive). On June 14, 2006, DOHA issued a Statement of Reasons (SOR), alleging trustworthiness concerns under Guideline H (drug involvement), Guideline G (alcohol consumption), and Guideline F (financial considerations) of the Directive.

In a sworn statement, dated June 14, 2006, Applicant responded to the SOR allegations and requested a hearing. On July 28, 2006, she submitted additional information. On September 9, 2006, the case was assigned to another administrative judge and reassigned to me on October 11, 2006. A Notice of Hearing was issued on October 12, 2006, setting the case for hearing on October 25, 2006. At the hearing Department Counsel introduced Government Exhibits (GX) 1 through 9 into evidence without objections. Applicant introduced Applicant Exhibits (AX) A through L into evidence without objections. She testified in her case-in-chief and called two witnesses. DOHA received the hearing transcript (Tr.) on November 13, 2006.

**PROCEDURAL ISSUES**

Prior to the commencement of the hearing Department Counsel moved to amend the SOR by striking the following

words from the first paragraph of the SOR: "paragraph 3-614, Department of Defense Regulation 5200.2.R and." Applicant did not object to the amendment and the motion was granted.

### FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in her answer and at the hearing, I make the following additional findings of fact:

Applicant is 35 years old. For the past 17 years, she has worked as a claims processor for a company that administers a government health insurance plan. In October 2004, she submitted a SF-85P.

Applicant admitted that from about March 1995 until March 2005, she illegally used cocaine with varying frequency and drank alcohol to the point of intoxication on numerous occasions, as a substitute for cocaine when she could not obtain it. (Tr. 26-27) Initially, she used cocaine two or three times a month for stimulation, but soon became addicted to it. (Tr. 25-26; GX 2 at 2) In April 2001, she began smoking crack cocaine a couple times a month with friends, who purchased it for her. (Tr. 36-37; *Id.*) Although she never used it at work, her usage affected her attendance because she usually purchased it on payday and was absent from work the following day. (Tr. 37) All of her supervisors know of her addiction problems because she felt compelled to tell them over the last 10 years. (Tr. 37) She was never arrested for any incident related to drugs or alcohol. (Tr. 27)

From November 27, 2001, to December 29, 2001, Applicant was an inpatient at a residential drug treatment where she was diagnosed as Cocaine Dependence. She relapsed while there and was terminated from the program. (Tr. 39) On June 2, 2004, she voluntarily entered an outpatient treatment program for 28 days. (Tr. 39) She was again diagnosed as Drug Dependent, as well as Alcohol Dependent. In August 2004, she voluntarily entered inpatient treatment where she resided for 28 days. From approximately October 2004 until May 2005, she received outpatient treatment for both addictions. (Tr. 52). During that period of time, she continued using cocaine from November 2004 until March 2005, at which point she decided to stop using both substances and became serious about recovery. (Tr. 40, 52)

Currently, Applicant attends Alcoholics Anonymous two or three times a week and a recovery group at her church weekly. (Tr. 44) She is in contact with her former AA sponsor and talks to her current sponsors every week. (Tr. 54; Answer) Over the course of her last treatment, she regularly participated in individual and group counseling sessions. Now, she sees her therapist as needed and attends church routinely. (Tr. 26) She no longer associates with people engaging in substance abuse. (Tr. 42) She is strongly committed to sobriety, a new life, and her job. She said, "I look back and it makes me sick, nauseated, and I just - in my heart, I would never, ever even want to think about going back . . . I have no desire to do either and it's been that way for 20 months. I just don't even think about it. It's not even on my mind, ever." (Tr. 55) She was a credible witness.

Applicant's substance abuse counselor testified. He is a Licensed Professional Counselor and a Certified Alcohol and Substance Abuse Counselor, Level III. He has been practicing in the area of addictions for 15 or 16 years. (Tr. 67) He has about 2,500 patient contacts a year through various groups and individual sessions. (Tr. 61) He met Applicant in October 2004, and "diagnosed her Cocaine Dependent, and probably Alcohol Dependent, but certainly Alcohol Abuse." (Tr. 59) He saw her regularly for individual and group therapy. He believes she is very engaged in recovery and considers her to be in the "top one or two percent of those in recovery." (Tr. 61) She has accepted all of his recommendations, including consistent attendance at therapy sessions. (Tr. 60, 62: AX A) He perceives her relapses as a natural evolution of the recovery process associated with healing brain chemistry. (Tr. 64) He happily testified for her because "she has been such an inspirational example of someone who has really earned . . . an outstanding recovery." (Tr. 60-61) He was a very persuasive and credible witness.

Applicant admitted her financial difficulties arose in 1995 when she began purchasing cocaine instead of paying her bills. (Tr. 30: GX 2) They continued until approximately 2005, when she completed treatment, consulted with a professional credit counselor, and established a budget with the help of her brother. (Tr. 30) During those nine years, she filed a Chapter 7 bankruptcy in November 1996 and discharged approximately \$15,400 in debts in February 1997. In November 2002, she filed a Chapter 13 bankruptcy, but voluntarily dismissed it in March 2003 because she did not make the monthly payments. (Tr. 45) In October 2004, the bankruptcy court entered another discharge order for debts

totaling about \$15,500, pursuant to a Chapter 7 petition she filed in June 2004. In both instances, the debts consisted of credit card bills, medical bills and personal loans. (GX 4 and 6) In July 2001, a former landlord obtained a \$1,348 judgment against her, which was paid in 2001 through a wage garnishment. (Tr. 46; Answer)

Presently, Applicant rents a room from a couple who have an alcohol and drug free home. (AX D) She closely monitors her finances in accordance with a budget she established in March 2005. (Tr. 30) Her net monthly income is approximately \$1,600 and her expenses fall within that amount. (Tr. 46-48) She has one credit card with a \$15 balance. (Tr. 48)

In addition to her therapist, Applicant called her father as a witness. He is a former member of the United States Air Force and a retired civil servant of the United States Post Office where he worked for 36 years. He is familiar with his daughter's addiction problems, but has noticed a significant behavioral shift in her since March 2005 and her financial situation. He believes she is on the recovery road and has made remarkable progress. (Tr. 76-78; AX E) Based on his years with the federal government, he has an appreciation for the importance of safeguarding sensitive information and does not believe Applicant poses a security risk. (Tr. 74)

Applicant submitted letters from friends at church and in recovery programs. All of them document a noticeable change in her behavior over the past twenty months and are confident she will not relapse into her previous problems. (AX B-K) Her employer referred to her as a "'good worker,' who is doing well in her position." (AX Q)

### POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information."

To be eligible for assignment to sensitive duties, an applicant must meet the security guideline contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

**Guideline H - Drug Involvement:** Improper or illegal involvement with drugs raises trustworthiness concerns. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

**Guideline A - 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 or sensitive information due to carelessness.

**Guideline F - Financial Considerations:** An individual who is overextended is at risk of having to engage in illegal acts to generate funds, and thus raises a trustworthiness concern.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

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 a balanced decision. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In

evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (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.

Granting an applicant's clearance for access to classified information is based 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 classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance request to an individual is not necessarily a judgment of the applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying condition and an applicant's present security suitability. *See* ISCR Case No. 95-0611 at 3 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the position of the government. *See* ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." *Id.*

## CONCLUSIONS

I considered all facts in evidence and the application of the appropriate legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth in the SOR:

### Guideline H: Drug Involvement

Based on Applicant's admissions that she used cocaine with varying frequency from 1995 to at least March 2005, the Government established a potential disqualification under Drug Involvement Disqualifying Condition (DI DC) 1: *Any illegal drug use, which includes cocaine.*

The Government having raised a trustworthiness concern, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions under this guideline, I concluded Drug Involvement Mitigating Condition (DI MC) 1: *A demonstrated intent not to abuse any drugs in the future*, applies. Coupled with 20 months of sobriety and ongoing participation in recovery, Applicant's credible testimony about her new recovery life style, demonstrates her intention to remain drug and alcohol free.

### Guideline G: Alcohol Consumption

The Government established a potential disqualification under Alcohol Consumption Disqualifying Condition (AC DC) 4: *Habitual or binge consumption of alcohol to the point of impaired judgment.* Applicant admitted that for more than ten years she drank alcohol to the point of intoxication numerous times and was diagnosed by substance abuse counselors as alcohol and drug dependent while attending two separate treatment programs.

After reviewing the mitigating conditions, I concluded that Alcohol Consumption Mitigating Condition 3: *Positive changes in behavior supportive of sobriety* apply. In addition to the reasons noted under Guideline H, Applicant also presented evidence that she has continued to perform her job satisfactorily and manage her finances responsibly. Her

friends, father and therapist corroborate positive behavioral changes in her life and participation in activities supportive of sobriety.

#### Guideline F: Financial Considerations

The Government established a potential disqualification under Financial Considerations Disqualifying Conditions (FC DC) 1: *A history of not meeting financial obligations*, FC DC 3: *Inability or unwillingness to satisfy debts*, and FC DC 5: *Financial problems are linked to gambling, drug abuse, alcoholism, or other issues security concerns*. Based on Applicant's admissions and documentary evidence, she has a ten-year history of not meeting her financial obligations as a result of substance abuse problems and unwillingness to pay her bills. Those addictions caused her to discharge debts through bankruptcy in 1997 and 2004

I reviewed all of the Financial Considerations Mitigating Conditions (FC MC) under the guideline and concluded FC MC 4: *The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*, applies. Since receiving professional credit counseling and establishing a budget, her financial problems have been under control for at least 20 months. She also paid the \$1,348 judgement listed in the SOR.

#### The Whole Person Analysis

In addition to evaluating the disqualifying and mitigating conditions under each guideline, I considered the totality of the evidence in view of the "whole person" concept, including Applicant's age, the ten years she abused drugs and alcohol, her candid testimony about her substance abuse history and current recovery program, as well as her 17-year employment history with the same employer. I gave great weight to the testimony of her substance abuse counselor, who believes she has remarkably changed her life and is a recovery success. I also considered her present living arrangement and the support of her family and friends. After evaluating all of these positive facts and the probability that the security concerns are unlikely to arise in the future, I am convinced that she warrants access to sensitive information. Applicant mitigated the security concerns raised by her drug involvement, alcohol consumption, and financial considerations. Accordingly, Guidelines H, G and F are concluded for her.

### **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 as follows:

Paragraph 1: Guideline H (Drug Involvement) FOR APPLICANT

Subparagraphs 1.a - 1.g: For Applicant

Paragraph 2: Guideline G (Alcohol Consumption) FOR APPLICANT

Subparagraphs 2.a - 2.c For Applicant

Paragraph 3: Guideline F (Financial Considerations) FOR Applicant

Subparagraphs 3.a - 3.e 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 Applicant eligibility for assignment to sensitive duties. Her application for eligibility is granted.

Shari Dam

Administrative Judge