

DATE: November 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 06-10770

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 24-year-old claims processor who has worked for the same Defense contractor since November 2004. Between the ages of 16 and 20, she was arrested for nine minor incidents. She only noted the most egregious event on her Questionnaire for Public Trust Positions because she did not think the other incidents she could recall were applicable. Since reaching the age of 21, she has had a clean record, returned to finish her secondary education, maintained full-time employment, become engaged, and had a baby. Applicant has shown that neither her personal nor criminal conduct poses an unacceptable risk. Eligibility for an ADP I/II/III position is granted.

STATEMENT OF THE CASE

On June 27, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary determination that Applicant was not eligible for assignment to information systems positions designated ADP I/II/III. ⁽¹⁾ The SOR alleges security concerns under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct). Specifically, it alleges that Applicant was arrested on nine separate occasions between 1998 and 2002, and that she deliberately failed to disclose eight of those arrests on a Questionnaire For Public Trust Positions (SF-85P).

A notarized, but undated, Answer to the SOR was received by DOHA on July 20, 2006. In that answer, Applicant admitted all the criminal conduct allegations. She also admitted, with explanation, the sole allegation raised regarding personal conduct. Because she failed to indicate whether she wished to have either a hearing or a decision based only on the record, Applicant was asked to indicate her preference and resign her answer. She stated, in her response received on August 7, 2006, that she did not wish to have a hearing. ⁽²⁾ On August 18, 2006, the government submitted its FORM, containing its argument and seven supporting items. Applicant received the FORM on August 31, 2006, but declined to respond to the government's argument and supporting items within the 30-day period provided. The case was assigned to me on November 1, 2006.

FINDINGS OF FACT

Applicant's admissions to all the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 24-year-old claims processor who has worked for the same Defense contractor since November 2004. By the time she completed her Questionnaire For Public Trust Position (SF-86P) on November 28, 2004, she had returned to school to finish her high school education and started working in her present position. Between the time she turned 18 years old and the time she assumed her current employment, she had approximately seven short term jobs; she was fired from two of those jobs⁽³⁾ for using too many sick days. She is currently engaged to be married and has a two-year-old daughter.

The facts of record are scant and Applicant has offered little information in her answer to the SOR as background to the facts at issue. Both the SOR and her admissions indicate she has been arrested nine times. She was first arrested on December 3, 1998, at the age of 16, then charged and found guilty of Habitual Truancy. The following year, when she was 17 years old, she choked her mother's boyfriend's son when she caught him inappropriately touching her four-year-old sister in a sexual manner; the boy's father called the police. She was arrested on September 20, 1999, charged with Child Abuse - Recklessly Causing Harm, and issued a ticket.

Shortly after Applicant's 18th birthday, on New Year's Eve in 1999, a neighbor called the police to complain about a party she was hosting. When the officers arrived, she was arrested and charged for Underage Possession/Consumption of Alcohol. When marijuana seeds were discovered in one of the ashtrays on the premises, she was also arrested and charged for Possession of THC (tetrahydrocannabinol), the psychoactive substance present in marijuana. Two months later, on February 2, 2000, she stole a packet of cigarettes from a store. She was arrested and charged with Retail Theft. Eventually, Applicant was found guilty and fined \$91.50.

On March 15, 2001,⁽⁴⁾ Applicant again hosted a raucous party and the police were summoned. She was arrested and charged with Underage Drinking - Possession of Alcohol. Ultimately, she was found guilty and fined \$74.00. She was again arrested on May 23, 2001, and charged with Underage Alcohol Violation. Applicant does not remember the facts surrounding this incident, but suggests she was issued a ticket for the act.

On or about July 22, 2001, Applicant and her younger, but physically larger, brother got into a fight. Their mother called the police after Applicant left. Because she was 19 years old and her brother was 16 years of age at the time, Applicant was arrested and charged with Child Abuse - Intentionally Causing Child Abuse (Felony) and Disorderly Conduct. Eventually, the charge was reduced and she was only fined \$119.75.

At the age of 20, Applicant dated a man with emotional problems and who lived with his parents. After locking himself in the bathroom and threatening suicide, his mother asked Applicant to come to their house and intercede. Applicant's mother called the police. The man or someone in his family told the police that the 5' 2" Applicant had broken down the bathroom door, although it was the man's cousin who had broken the door. She was arrested on April 30, 2002, and charged with Disorderly Conduct, for which she was found guilty and fined \$122.50.

Applicant's last cited criminal incident occurred on October 28, 2002. After being pulled over for speeding, it was discovered that when she failed to timely pay a prior ticket, her driver's license had been revoked. She was arrested and charged with Operating after Revocation. Eventually, she was found guilty and fined \$125.00.

On November 28, 2004, Applicant executed an SF-86P. She answered "yes" to "**Question 20. Your Police Record** In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s)" She provided one incident, which is nearly illegible on the copy provided. The government states in its FORM without contradiction that the entry pertains to her 2001 fight with her brother. When she completed her SF-86P, she did not remember some of the incidents, and was not aware she had to list alcohol-related incidents for which she received a ticket.

Applicant has had no other incidents of a criminal nature in over four years and no such incidents since turning 21 years of age in December 2002. She states that she has turned her life around. She is now 24 years old, engaged, and the

mother of a two-year-old child. She has held her current position for two years.

POLICIES

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in the Regulation. "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."⁽⁵⁾ Appendix 8 of the Regulation sets forth the personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽⁶⁾ Each eligibility determination must be a fair, impartial, and commonplace decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation.⁽⁷⁾ An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 the participation; (6) the presence or absence of rehabilitation and other pertinent 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.⁽⁸⁾

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made.⁽⁹⁾ In security clearance cases, the Government initially must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.⁽¹⁰⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽¹¹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [her] security clearance."⁽¹²⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹³⁾

The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has presented a case for disqualification under both Guideline J (Criminal Conduct) and Guideline E (Personal Conduct). For clarity, I will discuss each separately.

Criminal Conduct

DOHA determined that Applicant was not eligible for assignment to information systems positions designated ADP I/II/III based on her nine instances of criminal conduct. Criminal conduct raises a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Here, Applicant admits that she was arrested on nine occasions and found guilty of most of the charges raised. Consequently, both Criminal Conduct Disqualifying Condition (CC DC) 1 (*any conduct, regardless of whether the person was formally charged*) and CC DC 2 (*a single serious crime or multiple lesser offenses*) apply.

The incidents at issue occurred between December 1998, when Applicant was 16 years of age, and October 2002, when she was 20 years old. Because they are multiple in number, Criminal Conduct Mitigating Condition (CC MC) 2 (*the crime was an isolated incident*) cannot apply. Since the last incident, however, over four years have passed. Given the passage of four years since the last incident, and in light of the fact that the majority of incidents occurred over five years ago when she was still a teenager, CC MC 1 (*the behavior was not recent*) applies.

Because the record discloses few supplemental facts to complement Applicant's brief comments on each allegation, it cannot be determined whether CC MC 3 (*the person was pressured or coerced into committing the act and those*

pressures are no longer present in that person's life) or CC MC 4 (the person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur) applies.

Applicant has not had another criminal incident in over four years and none has occurred since she turned 21 years of age. She states that she has turned her life around, and the facts support her. She is no longer a single teenager or 20-year-old throwing loud parties or getting into fights. She is on the verge of her 25th birthday. She no longer goes from one short term job to another; instead, she has responsibly held her present position for two years. She has returned to school and is working toward her high school diploma. She is engaged to be married and the mother of a two-year-old daughter. The record shows that she has matured considerably and is no longer engaging in the petty criminal acts that highlighted her youth. Based on the significant turnaround that has transpired in her life since reaching her 21st birthday, CC MC 5 (*there is clear evidence of successful rehabilitation*) applies. For the same reasons, and in light of the length of time since her last criminal act, she has mitigated criminal conduct security concerns.

Personal Conduct

Under the applicable Regulation, personal conduct is a major concern because it asks whether a person's past conduct justifies confidence that the person can be trusted to properly safeguard classified information. Personal 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. The Regulation sets out certain conditions relating to personal conduct that could raise security concerns.

Here, the SOR states that Applicant deliberately falsified material facts on her SF-85P by not listing all of her arrests in response to Question 20. She admits her answer was incomplete, but denies she deliberately tried to falsify or conceal information. Rather, she did not remember some of the incidents, and did not think "drinking tickets" were to be listed in response to the question as it was worded. Indeed, she did note the most serious incident, Intentionally Causing Child Abuse (Felony) that was eventually reduced. Given her interpretation, it is reasonable to conclude she did not purposefully falsify or conceal the other, minor and comparatively mundane, infractions. Moreover, there is no evidence that her failure to add that laundry list of youthful offenses was done with the express intent to falsify material facts. Absent that intent, a disqualifying condition under Guideline E cannot be sustained.

I have considered Applicant under the "whole person" concept based on the evidence in the record before me. She is a maturing young woman who had a reckless girlhood, during which she was arrested for a number of relatively minor incidents. Two of those incidents occurred before she reached the age of majority, and all the charges occurred before she turned 21 years of age in December 2002. None of the crimes cited are particularly grievous and none are much more than examples of youthful indiscretion.

More important is the woman she is today, for that is the bellwether as to the security concerns raised. Rather than abandon her education, Applicant has returned to school to finish high school. Instead, she abandoned her practice of moving between short term jobs and has started a stable career with her current employer, where she has worked without interruption for two years. She has become a mother and is currently engaged to be married. Soon to turn 25 years old, she has not had a criminal incident since her driving infraction when she was 20 years of age. Taken together, it is apparent that Applicant has matured considerably in the past four years, and grown from being a miscreant youth to being a responsible working adult and mother. Most importantly, the progress she has made and the woman she is today does not raise security concerns regarding her present judgment, reliability, and trustworthiness. Given all the facts, explanations, and considerations, Applicant does not pose an unacceptable security risk based on either her criminal or personal conduct. Consequently, I conclude that Applicant is entitled to a favorable eligibility determination.

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 J (Criminal Conduct) FOR APPLICANT

Subparagraph 1.a For Applicant

Subparagraph 1.b 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

Paragraph 2. Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for assignment to sensitive duties. Eligibility for positions designated ADP I/II/III is granted.

Arthur E. Marshall, Jr.

Administrative Judge

1. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The procedural rules set out in the Directive for security clearance cases are applied to ADP trustworthiness determinations. The adjudicative guidelines set out in Department of Defense Regulation 5200-2R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation), are used to make ADP trustworthiness determinations.

2. In its File of Relevant Material (FORM), however, the government incorrectly noted "The second Answer stated that Applicant requests a hearing." FORM at 2.

3. In October 2001 and November 2000 when Applicant was 20 and 19 years of age, respectively.

4. The SOR indicates that this incident occurred in 2000, and Applicant agreed to that allegation. In her comment accompanying that concession, however, she described the incident by citing to the same month and day, but indicated it occurred in 2001. The government declined to submit evidence that her version is not the most accurate.

5. Regulation ¶ C6.1.1.1.

6. Regulation Appendix 8.

7. *Id.*

8. *Id.*

9. Regulation ¶ C8.2.1.

10. Directive, ¶ E3.1.14.

11. Directive ¶ E3.1.15.

12. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

13. Directive ¶ E2.2.2.