

DATE: November 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

P Case No. 06-11792

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 29-year-old employee of a defense contractor who has a history of illegal drug use and alcohol driving related incidents as recent as 2005. She has failed to mitigate the trustworthiness concerns under drug involvement, alcohol consumption, and criminal conduct. Applicant's eligibility for an assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On November 16, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").

⁽¹⁾ On August 10, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H, Drug Involvement, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct.

On August 23, 2006, Applicant submitted a notarized response to the SOR, and elected to have her case decided on the record in lieu of a hearing. Department Counsel submitted the government's written case on September 28, 2006. Applicant received a complete file of relevant material (FORM) on October 10, 2006, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case. ⁽²⁾ Applicant submitted a written response to the FORM (undated). The case was assigned to me on November 17, 2006.

Ruling on Procedure

On September 25, 2006, the government moved to amend the SOR. The introductory paragraph on page one was struck in its entirety and replaced with:

A review of your eligibility for occupying Information Systems Position designated ADP I/II/III to support a contract with the Department of Defense (DoD) has been made pursuant to Dod Directive 5200.6, dated January 2, 1992. This

office recommends that your case be submitted to an Administrative Judge for a determination that you are not eligible for occupying such a position.

In addition, the government moved to paragraph 2 (Personal Conduct): strike paragraph 2 in its entirety; and strike subparagraph 4.c. in its entirety. ⁽³⁾ The Applicant did not object to the motion. I granted the government's motion to amend the SOR.

FINDINGS OF FACT

Applicant admitted all SOR allegations under Guideline H, except 1.b. She also admitted Guideline G allegations 3.a. and 3.b. ⁽⁴⁾ Those admissions are incorporated as findings of fact.

Applicant did not admit or deny the allegations under Guideline J, 4a. and 4.b. as such, it is implied she denies these allegations. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a single, 29-year-old customer service representative of a defense contractor, seeking a position of public trust. She has been with her current employer for three years. ⁽⁵⁾ There is no information in the record concerning her work record. She submitted an application for a position of trust in connection with her employment in November 2004. ⁽⁶⁾

Over the years, Applicant smoked marijuana with her friends. Sometimes she bought it and sometimes it was given to her. She used it as a stress reliever and to calm down. She acknowledged that she first used marijuana in 1990. Initially, she smoked marijuana a couple of times a year. Over time, her usage increased to about four times a week. She acknowledged a dependence on marijuana. ⁽⁷⁾

Applicant does not recall when she started using alcohol. When she was young, she sometimes went to taverns with her Mother. She would have one or two drinks. She drank socially approximately twice a month, having a beer. In 2004, her alcohol intake increased to three to four nights a week. She drank to the point of intoxication at least twice a week. She still consumes alcohol but not as much. She intends to limit her consumption, and to not drink and drive. ⁽⁸⁾

Applicant's use of marijuana and alcohol led to several arrests. On September 4, 1998, Applicant was arrested and charged with possession of THC and possession of drug paraphernalia. She pled no contest to an amended charge of disorderly conduct. The second charge (possession of drug paraphernalia) was dismissed. On September 22, 2004, Applicant was arrested and charged with possession of drug paraphernalia, disorderly conduct, operating while intoxicated (OWI), and second degree recklessly endangering safety. She was found guilty of OWI. In addition to a fine of \$624, she was required to attend a drug and alcohol awareness course. ⁽⁹⁾ On January 17, 2005, Applicant was arrested and charged with disorderly conduct after an evening of consuming approximately ten mixed drinks. She pled no contest. ⁽¹⁰⁾

In her April 2005-sworn statement, Applicant offered extenuating circumstances involving each arrest and referred to an on/off again abusive relationship. However, she clearly admitted her alcohol and marijuana use over the years. She also stated she did not have any counseling or rehabilitation for alcohol or marijuana, but had a problem and would seek counseling. She was required to attend a group dynamics course for drug and alcohol awareness in 2004 after the OWI, but only attended one session. She decided she did not need to be analyzed. ⁽¹¹⁾

In Applicant's 2005 sworn statement, she stated that she was smoking marijuana in 2004 and in 2005 every few weeks. She denies use of any other drug. She does not believe her marijuana use, or alcohol use, or her arrests are relevant to her current job. She loves her job, and takes pride in providing service to her customers. ⁽¹²⁾

In her response to the FORM, Applicant recanted her earlier testimony that she used marijuana every few week in 2004 and 2005. ⁽¹³⁾ She stated that the time period of 1990 to 2005 was not true. She said she was nervous when questioned at the WPS office. She also stated that she overlooked the specific date span of 1990 to April of 2005 on the SOR. She

argued that while she did not specifically say she was no longer using marijuana, it should not be assumed that she was. She offered her pregnancy as sufficient proof that she is no longer using marijuana. However, in her eleven page sworn affidavit in 2005, she outlined in detail her use of marijuana and the frequency until 2005. She made inconsistent statements concerning her counseling and need for treatment in her various statements. She moved away from her initial 2005 sworn-statement, and denied her previous admissions.⁽¹⁴⁾ I do not find Applicant's rebuttal, in her response to the FORM, credible in light of her earlier handwritten sworn affidavit and initial admissions to the SOR. Therefore, I give it little, if any weight.

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."⁽¹⁵⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and

procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive 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:

Drug Involvement- Guideline H: 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.

Alcohol Consumption - Guideline G: 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.

Criminal Conduct - Guideline J: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

"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."⁽¹⁶⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹⁷⁾ An administrative judge should consider the following factors: (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 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.⁽¹⁸⁾

Initially, the Government 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.⁽¹⁹⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽²⁰⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²¹⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽²²⁾ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

Upon consideration of all facts in evidence, and after application of the appropriate adjudicative factors, I concluded the following with respect to the allegations set forth in the SOR:

Drug Involvement

The government established its case under Guideline H. Applicant's 1998 arrest for possession of THC and drug paraphernalia, and her admitted use of marijuana since 1990 gives rise to Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*any drug abuse*) and DI DC E2.A8.1.2.2 (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution*). Because there is no record of a diagnosis, DI DC E2.A8.1.2.3 (*diagnosis by a credentialed medical professional*) does not apply.

In her response to the FORM, Applicant stated she is pregnant and had no intention to use drugs in the future. Given her history of drug use, and lack of meaningful treatment, I find this insufficient proof of a demonstrated intent. From 1990 until at least 2005, Applicant was involved with illegal drugs. Therefore, Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*the drug involvement was not recent*) and DI MC E2.A8.1.3.2 (*the drug involvement was an isolated or aberrational event*) does not apply.

Applicant asserts her drug use was a mistake and she has matured. She asserts she has learned from her mistakes and now needs to care for her unborn child. However, Applicant has not mitigated the drug involvement trustworthiness concern. Guideline H is decided against Applicant.

Alcohol Consumption

The government has established its case under Guideline G. Based on Applicant's admissions and all the evidence, including the recent OWI, Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.1 (*alcohol related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*) applies.

Applicant admitted consuming alcohol, at times to the point of intoxication, to at least April 2005. Her description of the events on the evening of the OWI, include having consumed 10 mixed drinks. From mid 2004 until at least April 2005, she was drinking three to four nights a week. She admits drinking to intoxication twice a week during that time period. Applicant's described drinking habits are consistent with habitual consumption of alcohol. Based on all the evidence, AC DC E2.A7.1.2.5 (*habitual or binge consumption of alcohol to the point of impaired judgment*) apply.

I considered all the Alcohol Consumption Mitigating Conditions (AC MC) and conclude that none apply in this case. Applicant continues to consume alcohol, although she does not intend to drink and drive in the future. Her use of alcohol in the past as an outlet for stress and other problems is still a concern due to lack of meaningful treatment or rehabilitation. Applicant does not believe it impacts her life in any way. There is no evidence in the record to support behavior change or the elimination of high risk behavior. The OWI occurred in 2004 and the disorderly conduct charge in 2005 occurred after an evening of drinking. Despite Applicant's latest comments that caring for her unborn child is more important than alcohol, it is premature to conclude that she will not engage in such behavior in the future. Despite the fact she attended one session of counseling, and response to the SOR in 2006, she does not believe there is a concern at this time in her life. Applicant failed to mitigate the government's alcohol trustworthiness concern. Guideline G is decided against Applicant.

Criminal Conduct

The government has established its case under Guideline J. Based on Applicant's admissions, and several documented arrests for drug possession ,OWI, and disorderly conduct, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*allegations or admissions of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*) applies.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or

mitigation to overcome the case against her. Applicant's most recent offense was in 2005 for disorderly conduct after drinking. Therefore, Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*the criminal behavior was not recent*) and CC MC E2. A10.1.3.2 (*the crime was an isolated incident*) do not apply.

Applicant's arrests and her very recent use of marijuana do not persuade me that she is not likely to be involved in future incidents. The record is devoid of evidence pertaining to rehabilitation or treatment as such, CC MC E2.A.10.1.3.6 (*there is clear evidence of successful rehabilitation*) does not apply. Accordingly, the trustworthiness concerns under Guideline J are not mitigated, and I find against Applicant.

In all adjudications, the protection of national security is the paramount concern. The objective of the trustworthiness determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative decision that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Finally, I considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I balanced the factual circumstances and applied them to the adjudicative criteria established in the Regulation in light of the whole person concept. Applicant's inconsistent statements and her recent involvement with drugs and alcohol leaves doubt as to her trustworthiness. I have considered her desire to put this behind her, but I conclude it is premature to find in favor of Applicant.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR are:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Paragraph 3. Guideline G: Against Applicant

Subparagraph 3. a. Against Applicant

Subparagraph 3.b. Against Applicant

Subparagraph 3. c. Against Applicant

Paragraph 4. Guideline J: Against Applicant

Subparagraph 4.a. Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant's request for a determination of trustworthiness and eligibility for assignment to sensitive duties. Eligibility is denied.

Noreen A. Lynch

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum for the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.
2. The government submitted eight items in support of its contentions.
3. The paragraphs are numbered in accordance with the original SOR. However, subparagraph 4.c. should have been subparagraph 4.b.
4. Item 3 (Applicant's Answer to SOR, dated August 23, 2006) at 1-3.
5. Item 4 (Application for Public Trust Positions (SF 85P), dated November 16, 2004) at 1-7.
6. *Id.*
7. Item 5 (Applicant's affidavit, dated April 4, 2005) at 4-5.
8. *Id.* at 5.
9. Item 6 (Criminal Records Check, Federal Bureau of Investigation, dated requested December 14, 2004 at 1-3.
10. Item 8 (Criminal Records for January 17, 2005 offense) at 1-2.
11. Item 5, *supra* at note 7.
12. *Id.*
13. Applicant's response to Form, undated.
14. *Id.*
15. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
16. Directive, ¶ E2.2.1.
17. *Id.*
18. *Id.*
19. Directive, ¶ E3.1.14.
20. Directive, ¶ E3.1.15.
21. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
22. Directive, ¶ E2.2.2.