

DATE: December 11, 2006

In re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 06-11775

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 21-year-old employee of a defense contractor. She used marijuana daily for a four-month period in 2003 and used it at least once in 2005. On three to four occasions during the same time frame, she used opium. Applicant also used Vicadin, without a prescription, at least three times during that period. In May 2003, she was issued a citation and charged with possession of marijuana in public. In May 2003, she tested positive for marijuana at a pre-employment drug test. In her security clearance application, she failed to disclose her citation for use of marijuana. Eligibility for an ADP I/II/III position is denied.

STATEMENT OF THE CASE

On November 23, 2004, Applicant applied for a determination of eligibility for assignment to sensitive positions and completed a Questionnaire for Public Trust Positions (SF 85P).⁽¹⁾ On June 28, 2006, the Defense Office of Hearings and Appeals (DOHA) issued her a Statement of Reasons (SOR) detailing the basis for its preliminary determination that she was not eligible for assignment to an Information Systems Position designated ADP I/II/III.⁽²⁾ The SOR alleges trustworthiness concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct).

In a sworn, written statement, dated July 18, 2006, Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing.⁽³⁾ Department Counsel submitted the Government's written case on August 29, 2006. A complete copy of the file of relevant material (FORM)⁽⁴⁾ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. In a written statement dated October 5, 2006, Applicant responded to the FORM. The case was assigned to me on November 1, 2006.

MOTION TO AMEND SOR

Department Counsel moved to amend the SOR as follows: (1) strike the introductory paragraph on page one and replace

it with the paragraph below, and (2) in subparagraph 1.d strike "arrested" and replace with "issued a citation." In the absence of an objection, Department Counsel's motion to amend the SOR is granted. The amended introductory paragraph on page one now reads:

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 5220.6, 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. This recommendation is based on the following reasons:

Amended subparagraph 1.d now reads:

You were issued a citation on May 23, 2003 in Madison, Wisconsin and charged with Possession of Marijuana or Cannabis in Public. You pled No Contest and were fined \$100.00.

FINDINGS OF FACT

Applicant admitted some of the factual allegations pertaining to drug involvement under Guideline F, subparagraphs 1.a through 1.c, 1.e and personal conduct under Guideline E, subparagraph 2.a. She denied the allegation pertaining to drug involvement, subparagraph 1.d. Those admissions are incorporated herein as findings of fact. After a thorough and careful review of the record, I make the following findings of fact:

Applicant is a 21-year-old employee of a U.S. government contractor. She has worked for this contractor from August 2004 to present. She completed a SF 85P in November 2004 to continue her position as a customer service representative.

From approximately February 2003 until at least June 2003, Applicant used marijuana daily. She also used marijuana one time in approximately July 2005.

Applicant used opium on three to four occasions from approximately February 2003 until at least June 2003.

From February 2003 until at least June 2003, Applicant used Vicadin, a prescription drug, without a prescription. Applicant stated: "[t]his was however Vicadin that was in my home that was from a prior prescription that I had and because of pain from a rib injury which I was prescribed Naproxan for I also took some Vicadin."⁽⁵⁾ She also stated: "In the past I have use [sic] marijuana, opium and prescription drugs that were not mine."⁽⁶⁾

On May 23, 2003, Applicant was issued a citation and charged with possession of marijuana or cannabis in public. She pled no contest and was fined \$100. In May 2003, Applicant tested positive for marijuana at a pre-employment drug test.

On November 23, 2004, Applicant falsified material facts on her SF 85P, in response to Question 20 (Your Police Record: In the past 7 years, have you been arrested for, charged with, or convicted of any offenses(s)?). Applicant failed to disclose that she was charged with possession of marijuana or cannabis in public. Applicant stated that this question was ambiguous and that she did not think that her citation was considered to be something that she was "charged with."

Applicant started using drugs because of her depression.⁽⁷⁾ She is being treated by a psychiatrist, but not necessarily for her depression. She stated: ". . . I do not see my Psychiatrist as a need to work on depression but for getting my prescriptions (medications) for ADHD⁽⁸⁾ [attention deficit hyperactivity disorder] and discuss problems I might be having."⁽⁹⁾

Applicant's usual setting for using drugs was at a friend's house or someone's vehicle.⁽¹⁰⁾ She also explained: "I was using [drugs] because it helped me relax. I felt I became dependent and decided I needed to stop which I did. I don't see myself using drugs in the future."⁽¹¹⁾

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."⁽¹²⁾ 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."⁽¹³⁾ 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.⁽¹⁴⁾ 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.⁽¹⁵⁾

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable determination may be made.⁽¹⁶⁾ In trustworthiness determination cases, the Government initially must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible to occupy an ADP position.⁽¹⁷⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽¹⁸⁾ In security clearance cases, an applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁹⁾ "Any doubt as to whether access to classified information is clearly consistent with national interest will be resolved in favor of the national security."⁽²⁰⁾ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

Drug Involvement

Under Guideline H, a trustworthiness concern exists for an individual who is improperly or illegally involved with drugs because it raises questions regarding an individual's willingness or ability to protect sensitive information. Drug abuse or dependence may impair social or occupational functions, while increasing the risk of an authorized disclosure of sensitive information. Here, during the period from approximately February 2003 through June 2003, Applicant used marijuana daily, used opium on at least three occasions, and used Vicadin, a prescription drug without a prescription, approximately three times. Moreover, she used marijuana at least once in July 2005. She was issued a citation in May 2003 and charged with possession of marijuana in public. She also tested positive for marijuana during a pre-employment drug test. Consequently, Drug Involvement Disqualifying Conditions (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*) apply.

Various conditions can mitigate trustworthiness concerns arising from drug involvement. Here, Applicant, a 21-year-old, stated she was depressed and chose to satisfy her depression by using illegal drugs. She used marijuana on a daily basis from February 2003 until June 2003 and at least once in July 2005. Opium and Vicadin were used by her at least three times during the same four-month period. Moreover, she was issued a citation in May 2003 and charged with possession of marijuana in public and she failed a pre-employment drug screening as well, as marijuana was found in her urine. Based on the 2005 use of marijuana, I conclude that her drug involvement was recent. I conclude that Applicant's drug involvement was not an isolated or aberrational event because she used three distinct illegal drugs numerous times. Applicant does not plan on using illegal drugs in the future. However, not enough time has elapsed for Applicant to prove that she will restrain from using illegal drugs in the future. Thus, Drug Involvement Mitigating Conditions (DI MC) E2.A8.1.3.1 (*the drug involvement was not recent*), DI MC E2.A8.1.3.2 (*the drug involvement was an isolated or aberrational event*), and DI MC E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*)

do not apply.

Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question of a person's past conduct justifies confidence the person can be trusted to properly safeguard sensitive information. Applicant deliberately falsified a material fact on her SF 85P when she failed to disclose that she was issued a citation and charged with possession of marijuana in public. Thus, Personal Conduct Disqualifying Condition 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*) applies. None of the enumerated Personal Conduct Mitigating Conditions apply.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant was self-medicating by using illegal drugs for a condition she called depression. Applicant should have relied on the assistance of her psychiatrist to get her condition under control and not randomly use illegal drugs. Under these circumstances, Applicant has not mitigated the Government's case under the pertinent drug involvement and personal conduct guidelines. Accordingly, I conclude that it is not consistent with the national interest to grant a favorable trustworthiness determination to Applicant.

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 H (Drug Involvement): 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 2. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to make a favorable trustworthiness determination for Applicant. Eligibility is denied.

Jacqueline T. Williams

Administrative Judge

1. Item 4 (Questionnaire for Public Trust Positions (SF 85P), dated November 23, 2004).

2. 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.

3. Item 3 (Applicant's Answer, dated July 18, 2006).

4. The Government submitted five exhibits in support of the allegations in the SOR.

5. Item 3 (Applicant's Answer, dated July 18, 2006).

6. Item 5 (Applicant's Affidavit, signed April 13, 2005).

7. Item 5, *supra*, note 6.

8. Applicant indicated that she has ADHD, which she and her psychiatrist continue to work on. *See* Applicant's Response to FORM, dated October 5, 2006.

9. Applicant's Response to FORM, dated October 5, 2006.

10. Item 3, *supra*, note 5; Item 5, *supra*, note 6.

11. Item 5, *supra*, note 6.

12. Regulation ¶ C6.1.1.1.

13. Regulation Appendix 8.

14. *Id.*

15. *Id.*

16. Regulation ¶ C8.2.1.

17. Directive, ¶ E3.1.14.

18. Directive ¶ E3.1.15.

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

20. Directive ¶ E2.2.2.