

DATE: January 9, 2007

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-12558

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

While employed as executive assistant to a school superintendent, Applicant wrongfully took \$862.00 from a Student Activity Fund for which she was responsible for maintaining to pay blackmail to her daughter's heroin dealer. As a result, she was forced to resign and charged with 3rd Degree Theft. She entered into a Pre-Trial Intervention Program, and successfully completed all terms of the Program in December 2006. Additionally, she has not informed her husband about any aspect of these proceedings. Unmitigated personal and criminal conduct concerns remain. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 30, 2006, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on September 21, 2006, and elected to have a hearing before an administrative judge.

The government indicated they were ready to proceed on October 18, 2006. The hearing office received the case file on October 26, 2006, and it was assigned to me the same day. On November 13, 2006, DOHA issued a notice of hearing scheduling the case to be heard on December 1, 2006. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered three documents, which were admitted without objection as Government Exhibits (GE) 1 through 3. The Applicant offered 28 documents, which were admitted without objection as Applicant Exhibits (AE) A through BB. Applicant submitted one additional document post-hearing, which was admitted without objection as AE CC. DOHA received the transcript on December 11, 2006.

FINDINGS OF FACT

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

Applicant is a 54-year-old woman, who has been employed as an executive assistant for a defense contractor since August 2005. She seeks a security clearance as a condition of her employment. She has been married to her husband since February 1980, and they have a 19-year-old daughter.

Applicant graduated from high school in June 1970. From July 1970 to March 1971, she attended a prominent business school and was awarded a business certification in March 1971. She estimates she has earned approximately 12 college credits since attending business school. Tr. 61.

From January 1992 to February 2005, Applicant was employed as the secretary to a school superintendent. Among her duties was maintaining the Student Activity Fund, which consisted of funds parents paid for expenses not covered by the public school, such as school trips. While employed in this position, her then 17-year-old daughter, who was a junior in high school began dating a 22-year-old boyfriend she met at her part-time job at the local supermarket. Her daughter's boyfriend introduced her to the drug world and her daughter became addicted to heroin and crack cocaine. Until her daughter met her boyfriend, she was a model student involved in student activities, frequently making the honor roll, and had achieved competitive college board scores.

At some time during fall 2004, Applicant's daughter and her boyfriend were robbed at gunpoint by her daughter's heroin dealer when attempting to buy drugs. Among the items stolen from Applicant's daughter was her cell phone. Applicant testified she began receiving threatening telephone calls from the drug dealer demanding she pay \$900.00. The drug dealer explained to Applicant that her daughter and boyfriend were "down there and ripping him off." Tr. 74. Applicant was "beside" herself and "without thinking" took \$872.00 in October 2004 from the Student Activity Fund, met with her daughter's heroin dealer, and paid him off.

Applicant chose to take the money from the Student Activity Fund versus her joint checking or savings account because she did not want her husband to find out about the drug dealer's extortion. She acknowledges what she did was "really stupid." Tr. 25.

By the time Applicant paid off her daughter's heroin dealer, it was November 2004, and she and her husband had placed their daughter in a drug treatment facility. Applicant intended to repay the money she had taken from the Student Activity Fund, but before she did, the school "changed how money is going to be deposited" and her theft of the \$872.00 was discovered.

In February 2005, she was confronted by her boss, and admitted taking the \$872.00 from the Student Activity Fund. Her boss asked for a letter of resignation, which he presented to the school board. The school board accepted her letter of resignation, and elected to prosecute her.

Applicant was subsequently charged with 3rd Degree Theft on February 24, 2005. On May 2, 2005, she entered into a Pre-Trial Intervention (PTI) Program. Special Conditions imposed included 24 months of supervision, various fines and fees, and 50 hours of community service. At the time Applicant entered into her PTI Program, she had already made restitution of \$872.00 to the Student Activity Fund. Having complied with all conditions of her PTI, her case was submitted for early dismissal. On December 1, 2006, the cognizant Court having considered the PTI Program report and noted Applicant had complied with all terms of her PTI Program, dismissed the charge against her. AE CC.

At the time of hearing, Applicant had not informed her husband that she had been charged with 3rd Degree Theft, that she had gone to court and entered into a PTI Program, that she had been issued an SOR, or that she was attending a DOHA hearing. Applicant testified she did not inform her husband about the extortion problem with the drug dealer or the extent of their daughter's drug involvement because "because of how he already felt about her drug addiction." Tr. 51. Applicant further testified her husband "wanted to throw her (daughter) out of the house" and that it was a "very unpleasant time," and Applicant "felt it would be better that he not be aware of one more thing in relationship to her (daughter's) drug problem." Tr. 51.

Applicant testified her husband believes she resigned from her job "to go back and work in corporate" as "there were more opportunities than there were at the school." Tr. 51-52. Applicant added that her husband is diabetic and has high blood pressure, and is not well. Tr. 52. Applicant's husband is also responsible for running his father's business, a local inn, which her father-in-law "has almost run into the ground." Tr. 52. She added her husband does not handle stress very well, and does not take care of himself. Tr. 77.

Applicant hired a lawyer in conjunction with her being charged with 3rd Degree Theft, and borrowed the money to pay the lawyer from her mother. Her intent was to pay her mother "a little bit at a time, and would not be something that would be noticed (by her husband)." Tr. 53. Applicant also borrowed the money to repay her restitution to the school from her parents, and is in the process of repaying them.

Applicant's daughter ended up dropping out of high school, earned her GED, and is enrolled in a local community college. Applicant describes her daughter's current situation as "touch and go." Tr. 69. Since her daughter first became involved with drugs, she has been arrested for distributing drugs and was charged as a juvenile. She has had four to five relapses with heroin.

Applicant's mother testified that Applicant was "always compassionate, always, and overly compassionate with her lovely daughter. That's where she made her mistakes." Tr. 84. Her mother added she "overprotected her only child, and didn't want to recognize that she wasn't perfect until it was too far gone." Tr. 85.

Applicant's current and past work performance evaluations reflect above average performance. She submitted several positive reference letters. Her current supervisor described her work ethic as "above reproach," that she is "well liked and respected," and "always willing to help others," adding she is "dependable, hardworking, and diligent." AE C.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, 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." *Id.* at 527. The President has restricted eligibility for access to classified information 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." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an

applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline E - Personal Conduct

In the SOR, DOHA alleged three allegations under personal conduct (SOR ¶¶ 1.a. through 1.c.), to include stealing \$872.00 from a Student Activity Fund to pay blackmail to her daughter's heroin dealer, failing to report her theft until confronted by her supervisor, and being forced to resign from her position.

The Concern: 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. Directive ¶ E2.A5.1.1.

The government established its case under Guideline E by Applicant's admissions and evidence submitted for the allegations contained in the SOR under ¶ 1. Such conduct gives rise to Personal Conduct Disqualifying Conditions (PC DC) E2.A10.1.2.1. (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*); PC DC E2.A.5.1.2.4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*); and PC DC E2.A5.1.2.5 (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*).

I have carefully considered the Personal Conduct Mitigating Conditions under E2.A5.1.3. and have determined none of them apply. Applicant was in a position of trust and responsibility when she stole money from the Student Activity Fund. It was not until she was confronted by her supervisor several months later that she admitted taking the money. I find the devotion and care Applicant has for her daughter admirable. However, when placed under duress, rather than inform her husband and deal with their daughter's heroin dealer together, or seek help from her parents, she chose perhaps one of the worst choices available to her - unlawfully taking money entrusted to her.

The best indicator of future behavior is past behavior. Although Applicant has made restitution, and fully complied with all court imposed requirements, sufficient time has not elapsed to evaluate her behavior since her charge was dismissed on December 1, 2006. One would expect her behavior to conform to the law while under court supervision. Further troubling is Applicant's choice not to inform her husband of any aspect of these proceedings. Furthermore, it is difficult to assess to what extent Applicant would go to continue this secret. Viewing the facts as a whole, I conclude against Applicant on this concern.

Guideline J - Criminal Conduct

In the SOR, DOHA alleged one allegation under criminal conduct (SOR ¶¶ 2.a.), which consisted of being charged with 3rd Degree Theft in February 2005. Applicant entered into a 24 month PTI Program in May 2005. She successfully completed all terms of the Program leading to her charge being dismissed six months early in December 2006.

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and

trustworthiness. Directive E2.A10.1.1.

The government established its case under Guideline J by Applicant's admissions and evidence submitted for the allegation contained in the SOR under ¶ 2. Such conduct gives rise to Criminal Conduct Disqualifying Conditions (CC DC) E2.A10.1.2.1. (*Allegations or admission 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*).

I have carefully considered the Criminal Conduct Mitigating Conditions (CC MC) under E2.A10.1.3. and have determined none of them apply.

I must evaluate this case taking into account the facts which gave rise to Applicant's conduct and the position she held at the time she wrongfully took school funds. Applicant was a mature woman. No doubt she was terrified when contacted by her daughter's heroin dealer demanding \$900.00. No doubt the drug dealer was intimidating in his tone and demeanor. Unfortunately, and as stated above, among the options available to Applicant, her choice was among the worst possible. Her choice cost her a position she held for 13 years as secretary to the school superintendent and lead to her being charged with 3rd Degree Theft, and having a criminal record. Added to her problems is the continued burden of keeping this entire matter a secret from her husband. I conclude against Applicant on this concern.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. 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.

I considered the whole person. I considered Applicant's lifetime stellar employment record and considered the good character evidence provided. I also considered Applicant complied with all the terms of her PTI Program, and that the charge against her was dismissed six months early. I might also add that I found her to be a decent and caring individual, who was motivated by her desire to protect her daughter. Her desire to protect her daughter lead her to exercise some very poor judgment with severe ramifications. Further time is needed to further evaluate Applicant's conduct since the recent dismissal of her charge on December 1, 2006. Added to Applicant's ongoing challenges is the added burden of keeping this entire matter a secret from her husband.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2: Guideline J: 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 grant or continue a security clearance for Applicant. Clearance is denied.

Robert J. Tuider

Administrative Judge

1. Pursuant to Exec. Or. 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.