

DATE: December 29, 2006

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In re:

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SSN: -----

Application for Trustworthiness Determination

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ADP Case No. 06-12767

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHRISTOPHER GRAHAM**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 22-year-old imaging specialist employed by a federal contractor. In the past four years, she has been charged with battery, disorderly conduct, fraud on an innkeeper, bail jumping, and three separate charges related to underage drinking. She provided no evidence with her answer to the SOR and she did not respond to the FORM. She failed to mitigate security concerns under Guideline J (criminal conduct), Guideline E (personal conduct), and Guideline G (alcohol consumption). Applicant's eligibility for assignment to a sensitive position is denied.

### **STATEMENT OF THE CASE**

On November 22, 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 and modified (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On March 21, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleged facts under Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline G (Alcohol Consumption) of the Regulation. On August 17, 2006, Applicant responded to the allegations in the SOR, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on September 27, 2006. The FORM contained a request by the government to amend the opening paragraph of the SOR, by striking the language "*paragraph 3-614, DoD Regulation 5200.2-R and paragraph 2.4.,*". Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by October 27, 2006. Applicant filed no response. The SOR is amended as set forth on page 2 of the FORM. The case was assigned to me on December 1, 2006.

### **FINDINGS OF FACT**

Applicant admitted all of the allegations contained in the SOR. <sup>(1)</sup> Her admissions are incorporated herein as findings of fact. I make the following additional findings of fact.

Applicant is a 22-year-old imaging specialist employed by a federal contractor.<sup>(2)</sup> She is single, is a high school graduate, has no prior military service, and is seeking her first trustworthiness determination.<sup>(3)</sup>

### **Criminal Conduct**

On July 21, 2002, Applicant was charged with (1) battery and (2) disorderly conduct. Upon pleading guilty, she was granted probation for one year and the charges were subsequently dismissed.<sup>(4)</sup> On January 12, 2003, she was charged with underage drinking - possession of alcohol. On February 19, 2003, she was found guilty, fined \$100, and her driver's license was suspended for 90 days.<sup>(5)</sup> Also on January 12, 2003, she was charged with (1) fraud on hotel/restaurant keeper (skipped meal) and (2) misdemeanor bail jumping. On April 25, 2003, she was found guilty of both charges, and she was required to forfeit \$140, complete 25 hours of community service, undergo drug and alcohol treatment [later withdrawn], and placed on one year's probation.<sup>(6)</sup> On August 27, 2005, she was charged with underage drinking. Disposition of the charge is undetermined.<sup>(7)</sup>

### **Personal Conduct**

Applicant was terminated by her employer in May 2002, for giving a free oil change to a customer. Her conduct raises questions about her honesty and judgment, and her ability to comply with laws, rules and regulations.

### **Alcohol Consumption**

Applicant was arrested three times and charged with underage drinking/possession. The first incident occurred on January 13, 2003, at the age of 17. The second occurred March 24, 2003, at age 18. The third charge was on August 27, 2005, at the age of 20. These incidents demonstrate Applicant's excessive alcohol consumption.

## **POLICIES**

"No one has a 'right' to a security clearance."<sup>(8)</sup> 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."<sup>(9)</sup> The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>(10)</sup> Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy."<sup>(11)</sup>

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(12)</sup>

DoD Regulation 5200.2-R sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.<sup>(13)</sup>

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(14)</sup> It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## **CONCLUSIONS**

### **Criminal Conduct**

The government established its case under Guideline J. Criminal Conduct Disqualifying Condition (CC DC) 1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*) applies. Applicant admitted her arrests and convictions. While she objected to the wording of some criminal conduct allegations, she did not deny the charges against her. And the court records clearly set forth the findings, convictions, fines, probation, or other terms.

Criminal Conduct Mitigating Conditions (CC MC) 1 (*The criminal behavior was not recent*) does not apply. All of these occurred in the past four years. The incidents are not isolated, and there is no evidence of rehabilitation. No other mitigating conditions apply. I conclude Guideline J against Applicant.

### **Personal Conduct**

The government established its case under Guideline E. Personal Conduct Disqualifying Conditions (PC DC) 1 (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintance*) and PC DC 5 (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) are applicable. Applicant admitted she was terminated by her employer for giving a free oil change to a customer, which demonstrates dishonesty. The Guideline J allegations are cross alleged under Guideline E because the charges are a pattern of rules violation by Applicant. Finally, SOR allegation subparagraph 1.b. details a charge of fraud on an innkeeper, because she skipped out without paying a restaurant bill, once again demonstrating Applicant's dishonestly.

Most of the mitigating conditions under Guideline E directly relate to falsifications on the part of an applicant and not to the facts of this case. The only relevant mitigating condition is Personal Conduct Mitigating Condition (PC MC) 7 (*Association with persons involved in criminal activities has ceased*). Much of Applicant's criminal activity, and her employment termination, were the result of only her behavior. There is no evidence to make a determination that any association with persons involved in criminal activities with applicant has ceased. I conclude Guideline E against Applicant.

### **Alcohol Consumption**

The government established its case under Guideline G. The following Guideline G Alcohol Consumption Disqualifying Condition (AC DC) applies: AC DC 1 (*Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or their criminal incidents related to alcohol use*). Applicant admitted her underage drinking episodes.

In considering mitigation, Alcohol Consumption Mitigating Conditions (AC MC) 1 (*The alcohol-related incidents do not indicate a pattern*), AC MC 2 (*The problem occurred a number of years ago and there is no indication of a recent problem*), AC MC 3 (*Positive changes in behavior supportive of sobriety*), and AC MC 4 (*Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) do not apply. All three underage drinking incidents occurred over a year and one half time frame, and within the last three years. The conduct is recent and there is a pattern. Applicant has provided no evidence of positive changes supportive of sobriety. She offered no evidence that she had stopped drinking, and she has not offered any evidence that she has ever attended any alcohol treatment or rehabilitation program. Her conduct is not mitigated. I conclude Guideline G against Applicant.

### **Whole Person Analysis**

"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."<sup>(15)</sup>

"Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in

reaching a determination." (16)

In evaluating Applicant's case, in addition to the disqualifying and mitigating conditions, I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. (17) I considered her age (22), her education, her employment, and what might motivate her to continue her irresponsible conduct. This case raises questions about her reliability, judgment, and honesty. Applicant is still quite young and apparently has not matured sufficiently to guarantee that such activity will not happen in the future. Applicant must show that her judgment has improved and she has not done so. She did not mitigate her conduct, because she failed to provide any evidence to DOHA. The totality of the record raises reasonable and persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Applicant is not entitled to a favorable eligibility determination.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline J: 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: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Paragraph 3. Guideline G: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for assignment to a sensitive position. Eligibility is denied.

Christopher Graham

Administrative Judge

1. Applicant's response to SOR subparagraphs 1.a., 1.b., and 1.c. was "I deny the wording." She never explained what her objections were. Thus she never denied the criminal conduct. She did not answer subparagraphs 2.a. and 3.a., but as they are based on subparagraph 1, they are deemed admitted.

2. Item 4 (Public Trust Position Application (SF 85P), dated November 22, 2004) at 1-3.

3. *Id.* at 7-8.

4. Item 5 (Circuit Court Records, dated July 21, 2002) at 1-2.

5. Item 6 (Circuit Court Records, dated January 12, 2003 at 1-3.
6. Item 7 (Circuit Court Records, dated January 12, 2003) at 1-2.
7. Item 8 (Circuit Court Records, dated March 6, 2003) at 1-3.
8. <sup>0</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
9. <sup>0</sup> *Id.* at 527.
10. <sup>0</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960).
11. <sup>0</sup> Directive ¶6.2.
12. <sup>0</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
13. Regulation, Appendix 8, at 132.
14. <sup>0</sup> *See* Exec. Or. 10865 § 7.
15. Directive ¶ E.2.2.1.
16. *Id.*
17. *Id.*