



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
)  
SSN: ) ISCR Case No. 07-15150  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel  
For Applicant: *Pro se*

May 30, 2008

**Decision**

MASON, Paul J., Administrative Judge:

Applicant submitted her security clearance application (SCA) on May 15, 2007. On February 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under the criminal conduct guideline (Guideline J), the drug involvement guideline (Guideline H), and the financial considerations guideline (Guideline F). The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her notarized answer to the SOR on February 26, 2008. She elected to have her case decided administratively without a hearing. A copy of the government's File of Relevant Material (FORM, the government's evidence in support of the list of allegations in the SOR) was sent to Applicant on March 19, 2008. Applicant received the FORM on March 25, 2008. Applicant's response was due by April 25,

2008. No response was received. The case was assigned to this administrative judge on May 9, 2008. Based upon a review of the FORM and the entire case file, Applicant's eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant admitted seven allegations under paragraph 1 (criminal conduct). She also admitted all three allegations under paragraph 2 (drug involvement). Finally, she admitted all 13 debts under paragraph 3 (financial considerations). Applicant provided no explanation for the criminal conduct. With regard to the drug allegations, Applicant claimed she quit using drugs in 1998. Her explanation for the financial debts is that she was trying to help family members. She then stated that, "I have been paying things off."

Applicant is 49 years old, and has been employed in several positions with her company since October 2000. She is currently a stock clerk. She seeks a secret security clearance.

### **Criminal Conduct (CC)**

When Applicant was approximately 34 or 35 years old, she pled guilty to driving while under the influence of a controlled substance. (SOR 1.g.) She was sentenced to five years probation, 180 hours of community service, and ordered to attend a driving while under the influence (DUI) course. A bench warrant was issued after she failed to comply with the terms of probation.

On March 9, 1995, Applicant was arrested for being under the influence of a controlled drug (SOR 1.e.), riding a bike under the influence of drugs, and disorderly conduct related to drugs. Applicant was accepted into a drug diversion program, but was terminated for failing to comply with the requirements of the program. On August 15, 1996, Applicant pled no contest to the drug possession charges, and was sentenced to 6 days in jail. The record does not disclose the status of her probationary sentence she received in SOR 1.g.

Applicant was arrested for possession of stolen property (SOR 1.f.) on July 9, 1996. In August 1996, Applicant pled guilty to the charge. She received seven days in jail and probation for three years. In October of the same year, Applicant was charged with being under the influence of drugs; she was sentenced to 90 days imprisonment and three years probation. Her probation was terminated on February 1998, when she violated the probation terms of the July 1996 offense, and the February 1998 offense in SOR 1.a.

On June 17, 1997 (SOR 1.c.), Applicant was charged with failure to stop, driving while license suspended, no insurance, and no registration. She failed to appear for arraignment on the charge and a warrant was issued. On September 22, 1997, Applicant was sentenced to nine days in jail on the SOR 1.c. charge. On September 17, 1997 (SOR 1.b.), Applicant was charged with use/under the influence of controlled

substance (2 charges), presenting false identification to a police officer, possession of a controlled substance paraphernalia, and receiving stolen property. She was convicted and served time for the first two charges of possession of paraphernalia, and the paraphernalia charge. Applicant served 51 days in jail, followed by time on work release. While serving time on work release, she was charged with the SOR 1.a. offense.

On February 13, 1998 (SOR 1.a.), Applicant was charged with possession of cocaine base for sale, possession of a narcotic controlled substance, and use/under the influence of a controlled substance. Applicant received jail time (not gleaned from the record), and placed on probation for two years, which she completed in October 2000.

### **Drug Involvement (DI)**

Applicant began using cocaine (SOR 2.a.) in 1990. She became dependent on the drug, and by 1996, she was using the drug at least 2 or 3 times a week. (SOR 2.b.) In addition to using the drug, she began to sell it to others in 1996. Applicant used cocaine until February 1998. (SOR 2.c.)

### **Financial Involvement (FI)**

There are 13 delinquent debts listed under the financial guideline. The accounts are for utility bills, credit cards, furniture, and telephone service. The total amount of the delinquent debt is \$9,728.00. In her answers to interrogatories (Item 6), supplied to the government of December 10, 2007, Applicant submitted a personal financial statement (PFS). The PFS reflects she has \$1,215.00 of discretionary income left each month, after subtracting her monthly expenses from her monthly income. The only explanation provided by Applicant for the debts is that she was trying to help family members. She also claimed she was paying the debts off. Applicant provided no additional documentation regarding the debt.

### **Character Evidence**

Applicant stressed that the drug use and criminal conduct should no longer be a concern as she has not been involved in either activity for 10 years. Her faith in her church helped her beat drug use. No additional information was provided.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information. These guidelines are flexible rules of law that are applied in conjunction with the general policy factors of the whole person concept.

The protection of the national interest is the paramount consideration. AG ¶ 2b. requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an around-the-clock responsibility. The Government places a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

### **Criminal Conduct (CC)**

Criminal behavior casts doubts concerning a person’s judgment and trustworthiness.

### **Drug Involvement (DI)**

Besides being against the law, drug use fosters poor judgment.

### **Financial Considerations (FC)**

Inability to pay bills in a responsible fashion raises the chances of irresponsible behavior such as breaking the law to generate funds.

### **Analysis**

30. The *Concern*. “Criminal activity creates doubt about a person’s judgment, and reliability. By its very nature, it calls into question a person’s ability to comply with laws, rules and regulations.”

Applicant’s criminal conduct from 1993 to February 1998 establishes a pattern of behavior that falls within CC (DC) 31.a. (*a single serious crime or multiple lesser*

*offenses*) In 1993 (SOR 1.g.), Applicant exercised poor judgment by ingesting drugs and then attempted to operate a car. She exacerbated her conduct by not satisfying the terms of her probation, leading to a warrant for her arrest. In March 1995, Applicant was charged with three new offenses related to her drug use. Applicant did not take advantage of the drug diversion program, and the charges were reinstated, culminating in her no contest plea to disorderly conduct related to drugs.

Over the next three years, Applicant was convicted of seven new charges relating to her drug use. The charge in February 1998 was the most serious because Applicant was caught with paraphernalia, and provided a false identity to law enforcement in an effort to not have her true identity detected.

Even though Applicant provided little information about how and why she stopped committing crimes, I believe her criminal conduct was a function of her drug use. When she stopped using drugs, she stopped engaging in criminal behavior. Though the conduct was not isolated, it occurred in a five-year period, about 10 years ago. CC MC 32.a. *(so much time has elapsed since the criminal behavior occurred, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment)* applies.

CC MC 32.d. *(there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement)* also applies based on Applicant's credible though short explanation of her church's role in convincing her to stop her criminal behavior and drug involvement in 1998. The combination of the passage of time and Applicant's church involvement convince me she will stand by her 10-year-old period of abstinence, and continue to forego all drug use in the future.

### **Drug Involvement (DI)**

DI DC 25.a. (any drug abuse) and DI DC 25.c. *(illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia)* apply to Applicant's drug use that occurred between 1993 and February 1998. DI MC 26.a. *(the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, and good judgment)* receives considerable attention when evaluated with a demonstrated intention not to engage in future use as set forth in DI MC 26.b. (1) *(disassociation from drug-using associates and contacts)*, (2) *(changing or avoiding the environment where drugs were used)*, and (3) *(an appropriate period of abstinence)*. Applicant realizes that her religious faith stopped her drug use. I am confident she will continue her strong relationship with her church to preclude any possibility of sliding into drug use and probable criminal behavior.

## Financial Considerations (FC)

Two disqualifying conditions apply: FC DC 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history of not meeting financial obligations*). Applicant has carried some of this delinquent debt for three years or more without any effort on her part to resolve the debt individually or collectively. The only mitigating condition that could apply is FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control, and the individual acted responsibly under the circumstances*). It is fair to conclude that Applicant's growing drug problem between 1993 and 1998 had a negative impact on her overall finances. However, the termination of her drug problem in 1998 should have been a turning point in her life, allowing her to gain a new perspective on her objectives. Though she claims she was providing financial help for her family members, that decision to provide assistance was within her control, and receives no recognition under FC MC 20.b.

Applicant's claim she is trying to pay off debts calls for consideration of FC MC 20.d. (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). The condition does not apply as Applicant has provided no documentation of the debts she has paid. Without sufficient evidence to mitigate, extenuate, or explain the reasons why her debts became delinquent and/or documented efforts to repay the debts, Applicant's scant evidence in mitigation does not satisfy her ultimate burden of demonstrating she is entitled to security clearance eligibility.

## Whole Person Concept (WPC)

While Applicant has met her burden of persuasion under the CC and DI guidelines, she has not shown she is entitled to a security clearance under the FC guideline. The same conclusion is reached even after the circumstances of this case are evaluated in the context of the whole person. Without a plan in progress that indicates an effort to repay the creditors, the FC guideline is resolved against 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 (Criminal Conduct, Guideline J):	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For applicant
Subparagraph 1f.	For Applicant
Subparagraph 1g.	For Applicant
Paragraph 2 (Drug Involvement, Guideline H):	FOR APPLICANT

Subparagraph 1.a.  
Subparagraph 1.b.  
Subparagraph 1.c.

For Applicant  
For Applicant  
For Applicant

Paragraph 3 (Financial Considerations, Guideline F):

AGAINST APPLICANT

Subparagraph 3.a.  
Subparagraph 3.b.  
Subparagraph 3.c.  
Subparagraph 3.d.  
Subparagraph 1.e.  
Subparagraph 1.f.  
Subparagraph 1.g.  
Subparagraph 1.h.  
Subparagraph 1.i.  
Subparagraph 1.j.  
Subparagraph 1.k.  
Subparagraph 1.l.  
Subparagraph 1.m.

Against Applicant  
Against Applicant  
Against Applicant  
Against Applicant  
Against Applicant  
Against Applicant  
Against Applicant  
Against Applicant  
Against Applicant  
Against Applicant  
Against Applicant  
Against Applicant  
Against Applicant

### **Conclusion**

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Paul J. Mason  
Administrative Judge