



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 08-04492
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel

For Applicant: Joshua C. Snable, Esq.

March 23, 2010

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. The record evidence shows Applicant has a history of drug abuse during 2003–2005, when she was a heavy user of cocaine. She has also had financial problems (e.g., two bankruptcy cases), and she was arrested and charged for a drug-related offense in 2004, two alcohol-related offenses in 2006, and a bad-check offense in 2006. Applicant has made a remarkable turnaround, including earning a bachelor’s degree in electrical engineering and obtaining employment with a defense contractor. When she completed a security clearance application in May 2007, however, she did not provide a truthful answer to a question asking if she had ever been charged with or convicted of any drug- or alcohol-related offense. The record contains insufficient evidence to explain, extenuate, or mitigate her falsification and the concomitant security concerns. Accordingly, as explained below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on February 27, 2009, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guidelines known as Guideline G for alcohol consumption, Guideline H for drug involvement, Guideline J for criminal conduct, Guideline F for financial considerations, and Guideline E for personal conduct. The SOR also recommended that the case be submitted to an administrative judge to decide whether to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion and requested a hearing. The case was assigned to me September 1, 2009, The hearing took place October 27, 2009. The transcript (Tr.) was received November 3, 2009.

The record was held open until November 20, 2009, to allow Applicant to present additional documentary evidence. Applicant made a timely submission, and the post-hearing matters are admitted, without objections, as follows: Exhibit G—student loan documentation.

Findings of Fact

Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 32-year-old engineer who is seeking to obtain an industrial security clearance for the first time. She earned a bachelor's degree in electrical engineering in 2009, and she has since worked as an entry-level engineer for a defense contractor. Her current annual salary is about \$50,000. Her current supervisor has observed that Applicant "has exhibited character that indicates that she is a mature, responsible, conscientious, and trustworthy individual."² Previously, she worked as an engineering intern for another company during 2007–2009.

Her initial drug abuse consisted of experimental use of marijuana, LSD, opium, mushrooms, and oxycontin during 1996–2000. She married in 2000 and divorced about two years later in 2002. She did not use illegal drugs while married, but her marriage suffered due to her husband's infidelity, verbal abuse, and financial mismanagement.

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines), effective within the Defense Department on September 1, 2006, apply to this case. They replace the guidelines published in Enclosure 2 to the Directive.

² Exhibit F at 9.

After her divorce, Applicant used cocaine beginning in 2003, and continued using it until sometime in 2005. At times, she was a heavy user of crack cocaine, using it five to six times weekly, and she admits she became dependent.

With her family's encouragement and assistance, Applicant entered a 30-day inpatient program in November 2003.³ Although she completed the program, it was not overly helpful for Applicant because she "learned a lot more about how to do drugs."⁴ She completed the program in December 2003, and relapsed shortly thereafter.

In January 2004, Applicant sought to resolve ongoing financial problems by filing a Chapter 7 bankruptcy case. Most of the debt was credit card debt incurred before her 2002 divorce. This included a credit card account her husband had opened in her name without her knowledge. The bankruptcy court granted Applicant a discharge in May 2004.

In late February 2004, Applicant was arrested and charged with the offense of unlawful possession of a controlled substance.⁵ She was arrested after police found a rock of crack cocaine in her car when she parked along a street to use the drug. Her car was towed, and she was taken to the city jail and held for several days until released on bond. Subsequently, she appeared in court and prosecution of the charge was deferred conditioned on her reporting to the judge once a month. She did as ordered, and the charge was eventually dismissed without a conviction.

A few months later, Applicant entered inpatient treatment again in June 2004.⁶ This was a different experience compared with 2003, as this was a 13-week faith-based residential recovery program, and it produced better results for Applicant. Program records show that Applicant reported daily use of cocaine with the last use taking place on May 19, 2004.⁷ In addition, program records show that Applicant described herself then as sad, lonely, depressed, and wanting to escape from life. She also reported the following matters: (1) hearing voices or seeing things after drinking or using drugs; (2) being depressed to the point of being unable to make decisions; (3) suicidal thoughts; (4) attempting suicide about one month prior; (5) problems sleeping; (6) lack of appetite for food; (7) feeling there was someone watching her or planing harm to her; (8) uncontrollable crying spells; and (9) physical and sexual abuse. She believes these matters were tied to her cocaine use.⁸ She attended group classes on various subjects

³ Exhibit 5.

⁴ Tr. 86.

⁵ Exhibit 10.

⁶ Exhibit 4.

⁷ Exhibit 4.

⁸ Tr. 131-133.

and she had individual counseling as well. She successfully completed the program in early September 2004. She relapsed again, although she believes it was a one-time incident in early 2005, when she smoked crack cocaine. She knew after she used it that she did not want to use illegal drugs again and that she believed she was rehabilitated.⁹

In 2005, Applicant had more financial problems due to her drug abuse, low income, and not sufficient funds (NSF) checks. She sought to resolve her indebtedness by filing a Chapter 13 bankruptcy case and repaying her creditors through a court-approved repayment plan. It appears the plan called for Applicant to pay \$75 biweekly for a total of 60 months.¹⁰ She did so, completing the plan ahead of schedule, and the bankruptcy court granted her a discharge in July 2008.

In addition to her drug abuse, Applicant was arrested for two alcohol-related offenses. The first took place in May 2006, when she was arrested for driving under the influence of alcohol (DUI).¹¹ According to the arrest report, Applicant was arrested at about 6:00 a.m. when a police officer found her car sitting in the middle of an intersection under a traffic light. Her intoxication was obvious to the police officer when he spoke to her, and she stumbled out of the car when asked to step out. Her blood-alcohol level was tested twice with results of .298 and .20. She was arrested, her car was towed, and she was held in jail until her release the same day at about 8:00 p.m.

Applicant subsequently pleaded guilty to the DUI charge, but the court deferred adjudication conditioned on Applicant attending alcohol education classes, paying a fine, daily urinalysis, and attending Alcoholics Anonymous for six months. As a result, the DUI charge was dismissed without a conviction.

The second DUI arrest took place in mid-August 2006, when Applicant relocated within the same state to begin her bachelor's degree program in engineering.¹² She spent her first day there unpacking and then decided to go out for a drink after a long day. According to the arrest report, Applicant was arrested at about 1:35 a.m. when she was stopped at a safety check point. She was held in jail until about 4:30 p.m. the same day. The court dismissed the DUI charge due to lack of evidence or failure to prosecute after the arresting officer failed to appear.

In December 2006, she was arrested when she walked into a police station in response to an arrest warrant received in the mail for the offense of negotiating a worthless negotiable instrument (passing an NSF check).¹³ She resolved the matter by

⁹ Tr. 122–123.

¹⁰ Exhibit B.

¹¹ Exhibit 8.

¹² Exhibit 7.

¹³ Exhibit 9.

pleading guilty in municipal court and paying a total of \$361, which included a fine, court costs, and restitution.

About five months later in May 2007, Applicant completed a security clearance application for her job as an engineering intern.¹⁴ In doing so, she was required to provide truthful answers to various questions about her background, to include her police record and her use of illegal drugs. Questions 23a–23f concerned her police record, and she answered those questions in the negative except for two. For Question 23c, she reported that there was currently a criminal charge pending against her. She explained that the August 2006 DUI offense was pending a court date at that time. And for Question 23f, she reported that, in the last seven years, she had been arrested for, charged with, or convicted of an offense not listed in response to the previous questions. She noted the bad check offense, which she resolved by going to the police station and making payment. In response to Question 23d, she denied having ever been charged with or convicted of any drug- or alcohol-related offenses.

In response to Question 24a about illegal drug use, Applicant reported that she had used illegal drugs within the last seven years. She explained that she used cocaine an unknown number of times during the estimated period of June 2003 to August 2003, a period of about three months.

Applicant responded to various interrogatories issued by the Agency in August 2008.¹⁵ Asked why she failed to report the May 2006 DUI charge and the drug charge on her security clearance application, Applicant explained that she did not report those matters because both charges were dismissed and she was not sure if she was supposed to report them. She also noted that she did type the words “dismissed case” in response to Question 23, and she thought that would indicate that she had something else that was dismissed. Applicant stood by that response in her hearing testimony.¹⁶

In September 2008, Applicant obtained an assessment from a drug and alcohol recovery center.¹⁷ The assessment appears to have consisted of a relatively brief review of records and an interview with Applicant. The substance abuse therapist concluded that Applicant required no treatment because her cocaine dependence was in sustained full remission and alcohol dependence was in early partial remission.

Besides the two bankruptcy cases, the SOR also alleged eight delinquent debts in amounts ranging from \$54 to \$64 based on eight returned checks from two creditors. An August 2009 credit report lists the returned checks as collection accounts, but the credit report also shows the debts were incurred in the February–March 2005 period,

¹⁴ Exhibit 1.

¹⁵ Exhibit 2.

¹⁶ Tr. 129–130.

¹⁷ Exhibit 6.

which was shortly before the Chapter 13 bankruptcy case was filed.¹⁸ Applicant believes these debts were resolved by the bankruptcy, and she is formally disputing these debts through one of the major credit bureaus.¹⁹

Applicant reports that her current financial situation is stable. She has about \$4,000 in cash in the bank and she has money in a 401(k) retirement account. She denies any recent collection activity, with the last occurring before the Chapter 13 bankruptcy case.²⁰

Applicant has a valid driver's license issued by her state of residence. She has had no arrests since 2006; she is not pending any criminal charges; and she is not under any form of court-ordered supervision or probation.²¹

In May 2009, Applicant completed her bachelor's degree in electrical engineering with a grade-point average of 3.364.²² Her scholarship earned her membership in several honor societies.²³ She also presented multiple letters of recommendation from various individuals attesting to her remarkable turnaround and her suitability for a security clearance.²⁴

It appears that one of the keys to Applicant's turnaround is what she learned during the 13-week faith-based treatment program. She has attended a church on a regular basis since 2006, and she became a church member in 2008.²⁵ Her pastor reports that she has been an active member, giving regularly to outreaches in the community and ministry needs.

Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, the only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information.

¹⁸ Exhibit 3.

¹⁹ Exhibit C.

²⁰ Tr. 126–127.

²¹ Tr. 124–125.

²² Exhibit D.

²³ Exhibit E.

²⁴ Exhibits A, E, and F.

²⁵ Exhibit F at 8.

It is well-established law that no one has a right to a security clearance.²⁶ As noted by the Supreme Court in the case of *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁷ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²⁸ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³⁰ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³³ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³⁴ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.³⁵

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of all the relevant

²⁶ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

²⁷ 484 U.S. at 531.

²⁸ Directive, ¶ 3.2.

²⁹ Directive, ¶ 3.2.

³⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³¹ Directive, Enclosure 3, ¶ E3.1.14.

³² Directive, Enclosure 3, ¶ E3.1.15.

³³ Directive, Enclosure 3, ¶ E3.1.15.

³⁴ *Egan*, 484 U.S. at 531.

³⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.³⁶ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Analysis

The allegations under Guideline G³⁷ for alcohol consumption, Guideline H³⁸ for drug involvement, and Guideline J³⁹ for criminal conduct are discussed together because the record shows they are factually interrelated. During 2003–2006, Applicant engaged in drug abuse, alcohol abuse, and related criminal conduct that raised obvious security concerns under the three guidelines. It is now apparent that this unfortunate chapter of Applicant's life is over. The record shows she was able to overcome these matters through a combination of family involvement, determination, faith-based treatment, higher education, a good employment record, and involvement in her church. The record supports a conclusion that Applicant presented sufficient evidence of rehabilitation and reform to mitigate the security concerns. Accordingly, Guidelines G, H, and J are decided for Applicant.

Under Guideline F for financial considerations,⁴⁰ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness, financial problems or difficulties, or financial irresponsibility. A security concern typically exists due to significant unpaid debts. The overall concern under Guideline F is that:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise

³⁶ Executive Order 10865, § 7.

³⁷ Revised Guidelines, ¶¶ 21, 22, and 23 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁸ Revised Guidelines, ¶¶ 24, 25, and 26 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁹ Revised Guidelines, ¶¶ 30, 31, and 32 (setting forth the security concern and the disqualifying and mitigating conditions).

⁴⁰ Revised Guidelines, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

questions about an individual's reliability, trustworthiness, and ability to protect classified information.⁴¹

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

The record evidence supports a conclusion that Applicant has a history of financial problems or difficulties. The two bankruptcy cases, the delinquent debts, and the NSF checks all support this conclusion. This history raises concerns because it indicates inability or unwillingness to satisfy debts⁴² and a history of not meeting financial obligations⁴³ within the meaning of Guideline F. The facts are more than sufficient to establish these two disqualifying conditions. The facts also establish the disqualifying condition addressing deceptive or illegal financial practices based on Applicant's NSF checks.⁴⁴

Under ¶ 20 of Guideline F, there are six conditions that may mitigate security concerns.⁴⁵ The six conditions are as follows:

(a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) The person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

⁴¹ Revised Guidelines, ¶ 18.

⁴² Revised Guidelines, ¶ 19(a).

⁴³ Revised Guidelines, ¶ 19(c).

⁴⁴ Revised Guidelines, ¶ 19(d).

⁴⁵ Revised Guidelines, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

(e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) The affluence resulted from a legal source of income.

Here, the most pertinent mitigating conditions are ¶¶ 20(a), 20(b), and 20(e), and each applies in Applicant's favor. Similar to her drug abuse, alcohol abuse, and criminal conduct, Applicant's financial problems were largely tied to the period of 2003–2006, when she experienced difficult personal problems. That period is safely in the past, and Applicant is now handling her financial affairs in a reasonable and responsible manner. Accordingly, Guideline F is decided for Applicant.

Turning next to personal conduct under Guideline E,⁴⁶ it includes issues of false statements and credible adverse information that may not be enough to support action under any other guideline. The overall concern is:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.⁴⁷

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

The issue here is the truthfulness of Applicant's answer to Question 23d of her May 2007 security clearance application. The falsification allegation in SOR ¶ 5.b alleges Applicant deliberately failed to disclose the May 2006 DUI charge and the drug charge, both of which ended in dismissal. Applicant contends she did not report those matters because she did not understand the question required her to report dismissed criminal charges. Question 23d is clear, however, asking applicants if they have ever been charged with or convicted of any drug- or alcohol-related offenses. In addition, the instructions to Question 23 tell applicants to report information regardless of whether the record has been sealed or otherwise stricken from the court record except for certain convictions expunged under federal law, which does not apply here.

⁴⁶ Revised Guidelines, ¶¶ 15, 16, and 17 (setting forth the security concerns and the disqualifying and mitigating conditions).

⁴⁷ Revised Guidelines, ¶ 15.

Although her explanation is somewhat plausible, her credibility is further undermined by her apparently false answer to Question 24a when she misrepresented or underreported the full extent of her cocaine use.⁴⁸ Specifically, she reported using cocaine for a three-month period in 2003, when she knew she had used it from 2003 until sometime in 2005. Her answer to Question 24a was false because she knew she had undergone treatment a second time during June–September 2004, which took place after her February 2004 drug arrest.

The most likely explanation for all of this is Applicant was trying to paint herself in a positive light, because she was concerned that her police record and her history of illegal drug use might be a hindrance to obtaining a security clearance. Question 23d of the security clearance application required Applicant to provide a full, frank, and truthful answer about her police record and she failed to do so. And the record does not support a conclusion that her failure was due to a misunderstanding of the question or an honest mistake or simple negligence.

The established falsification supports application of the relevant disqualifying condition that addresses the deliberate omission, concealment, or falsification of relevant facts from a security questionnaire.⁴⁹ I reviewed all the potential mitigating conditions under the guideline and conclude none apply. Making false or misleading statements to the federal government during the security-clearance process is serious misconduct. It is not easily explained away, excused, or mitigated. Accordingly, Guideline E is decided against Applicant.

To conclude, the facts and circumstances surrounding Applicant’s falsification of her May 2007 security clearance application justifies current doubts about her judgment, reliability, and trustworthiness. She did not present sufficient evidence to explain, extenuate, or mitigate the concerns. In reaching this conclusion, I gave due consideration to the whole-person concept⁵⁰ and I considered all of Applicant’s favorable evidence, which was not insubstantial. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline G:	For Applicant
Subparagraphs 1.a–1.c:	For Applicant

⁴⁸ Although this matter was not alleged in the SOR, I considered it for the limited purpose of assessing Applicant’s credibility. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted).

⁴⁹ Revised Guidelines, ¶ 16(a).

⁵⁰ Revised Guidelines, ¶ 2(a)(1) – (9).

Paragraph 2, Guideline H: Subparagraphs 2.a–2.d:	For Applicant For Applicant
Paragraph 3, Guideline J: Subparagraphs 3.a–3.b:	For Applicant For Applicant
Paragraph 4, Guideline F: Subparagraphs 4.a–4.k:	For Applicant For Applicant
Paragraph 5, Guideline E: Subparagraph 5.a: Subparagraph 5.b:	Against Applicant For Applicant ⁵¹ Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge

⁵¹ This allegation refers to matters alleged in SOR ¶¶ 1, 2, and 3, which were decided for Applicant. According, this allegation is decided for Applicant as well.