

DATE: December 5, 2007

In Re:)
)
)
 -----) ISCR Case No. 06-26061
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
JOSEPH TESTAN**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In the absence of any evidence in mitigation, applicant's recent alcohol-related conviction and falsification of a Security Clearance Application (SCA) preclude a finding that it is clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On June 6, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on June 29, 2007, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about August 8, 2007. Applicant did not file a response to the FORM. The case was assigned to me on November 9, 2007.

RULING ON PROCEDURE

_____ Department Counsel's Motion to amend the SOR, by changing the date on which applicant allegedly executed a falsified SCA, is granted.

FINDINGS OF FACT

Applicant is a 51 year old employee of a defense contractor.

On January 8, 2006, applicant was arrested and charged with (1) Driving Under the Influence of Alcohol and/or Drugs and (2) Driving While Having a Measurable Blood Alcohol of .08% or More by Weight. In April 2006, he pleaded guilty to the second charge and was fined \$2,050.00, placed on probation for five years, and ordered to complete a first conviction program.

Applicant falsified material facts on an SCA he executed on January 27, 2006 by failing to disclose the aforementioned charges in response to Question 23(D). Although applicant responded in the affirmative to Question 23(D), which appeared on the SCA as "23D - ALCOHOL/DRUG CHARGE?" in explanation, he disclosed only a 1990 DUI conviction.

In his response to the SOR, applicant stated he "thought the question was for a conviction." He further stated he did not intend to mislead or falsify the SCA.

CONCLUSIONS

With respect to Guideline J, the evidence establishes that in 2006, applicant was charged with, and convicted of, driving with an alcohol level higher than the legal limit. As a result of the conviction, he was fined, placed on probation for five years, and ordered to complete a first conviction program. The SCA indicates he has at least one prior DUI. These facts require application

of Disqualifying Conditions 31(a) (*a single serious crime or multiple lesser offenses*) and 31 (d) (*individual is currently on probation*).

Although two alcohol-related driving incidents over 15 years apart establishes a *prima facie* case under Guideline J, it is not a very strong case. Applicant may very well have been able to overcome the Government's *prima facie* case had he offered credible evidence in mitigation. However, applicant offered no evidence in mitigation, and without such evidence, there is no basis upon which to conclude he has overcome the Government's security concerns under Guideline J.¹

With respect to Guideline E, the evidence establishes that applicant failed to disclose his 2006 alcohol-related charges when he completed the SCA just a few weeks after his arrest. Applicant claims he misunderstood the question, even though the word "charge" is prominently displayed and the word "conviction" is nowhere to be found. Applicant is a mature, experienced, and intelligent individual, as evidenced by the fact he teaches at a community college. He is simply too intelligent to have misunderstood the question.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on an SCA, it is extremely difficult to conclude that he or she nevertheless possesses the good judgment, reliability and trustworthiness required of clearance holders. Applicant's intentional falsification requires application of Disqualifying Condition 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . .*). No Mitigating Conditions apply. Based on the foregoing, Guideline E is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: AGAINST THE APPLICANT

DECISION

In light of all 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.

Joseph Testan
Administrative Judge

¹ There is no evidence that applicant paid the fine or completed the first conviction program.