

DATE: June 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03906

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The recency and extent of applicant's dishonest and criminal conduct precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On November 9, 2001, 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 November 29, 2001, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case on or about February 15, 2002. Applicant did not file a response to the Government's written case. The case was assigned to me on April 1, 2002.

FINDINGS OF FACT

Applicant is forty-two years of age. He served twenty years in the United States Navy.

Applicant completed and executed a Security Clearance Application (SCA) on March 5, 1999. In response to Question 33 of the SCA which asked, "In the last 7 years, have you ever filed a petition under any chapter of the bankruptcy code (to include Chapter 13)? applicant stated "no." This response was false because applicant had filed a bankruptcy petition in March 1993. [\(1\)](#)

Applicant admits that he intentionally provided the false information. In a signed, sworn statement he gave to the Defense Security Service (DSS) in February 2000, and in his response to the SOR, he provided essentially the same

explanation for his dishonest and criminal conduct, ⁽²⁾ to wit: (1) he was embarrassed by the bankruptcies and he did not want his company to know his personal business, (2) he did not realize the significance of the SCA, and (3) he did not read the certification explaining the sanctions for a false statement prior to signing the SCA.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Personal Conduct

Disqualifying Factors

- 1. E2.A5.1.2.2: The deliberate omission of relevant and material facts from any personnel security questionnaire.

Mitigating Factors

None.

Criminal Conduct

Disqualifying Factors

- 1. E2.A10.1.2.2: A single serious crime or multiple lesser offenses.

Mitigating Factors

- 1. E2.A10.1.3.2: The crime was an isolated incident.

CONCLUSIONS

The evidence establishes that applicant intentionally falsified material facts on an SCA he executed in March 1999 when he denied that he had filed any bankruptcy petitions during the previous 7 years. This dishonest and criminal conduct reflects adversely on applicant's judgment, reliability and trustworthiness. Although applicant sincerely regrets his dishonest and criminal conduct, the recency and extent of this conduct, together with the absence of any evidence from independent sources (e.g., friends, family, coworkers, supervisors) that would suggest applicant is now a reliable and trustworthy individual, precludes a finding at the present time that it is clearly consistent with the national interest to grant him access to classified information. For this reason, Guidelines E and J are 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. The Government alleges that applicant's response was false for an additional reason; namely, because he had filed a different bankruptcy petition on February 7, 1992. This allegation must fail, however, because the date this petition was filed was more than 7 years prior to the date he executed the SCA.
2. The falsification of material facts on the SCA constitutes a felony under 18 U.S.C. 1001.