

DATE: February 19, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06270

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On September 17, 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 October 13, 2001. The case was assigned to the undersigned on December 10, 2001. A Notice of Hearing was issued on December 17, 2001, and the hearing was held on January 9, 2002. The transcript was received on January 17, 2002.

FINDINGS OF FACT

Applicant is thirty-seven years of age. He is employed by a defense contractor in the telecommunications industry.

Guideline J

In May 1988, applicant was arrested and charged with (1) Promoting a Dangerous Drug III (Methamphetamine) and (2) Endangering the Welfare of a Minor, after he was found in possession of crystal methamphetamine (cm) while in the company of his minor girlfriend. In October 1990, the court accepted a deferred guilty plea from applicant on the first charge on the condition that he enter a drug treatment program and remain there until discharged with the concurrence of his probation officer. ⁽¹⁾ The second charge was dismissed. In November 1992, the court revoked the acceptance of the deferred guilty plea and found applicant guilty of Promoting a Dangerous Drug after he tested positive for an illegal drug on a drug test administered by his probation officer. Applicant was sentenced to thirty days in jail. During the next several years applicant violated his probation at least three more times, and on each occasion he was jailed and/or had his probation extended. Applicant was finally discharged from the original probation in March 2001 (Exhibit 9).

In June 1990, applicant was arrested and charged with Failure to Return a Rental Car. He had rented a car through a friend who worked at a rental agency. Eventually he stopped paying for the rental, and when the police stopped him while he was driving the car, he was arrested. He was found guilty of the charge and sentenced to thirty days in jail.

In March 1994, applicant was arrested and charged with Escape after he left a halfway house on a pass and did not return. He was sentenced to additional jail time.

In September 1994, applicant was arrested and charged with (1) Fraudulent Use of a Credit Card and (2) Promoting a Detrimental Drug III (marijuana), after he was caught using a credit card that he knew he was not authorized to use. He was found guilty of the first charge and sentenced to four days in jail. The second charge was dismissed.

Applicant was arrested in April 1998 and charged with Abuse of a Household Member. The charge was dismissed.

Guideline E

The Government alleges that applicant intentionally falsified material facts in response to two questions (Questions 26 and 27) on a Security Clearance Application (SCA) (G-1) that he executed on November 24, 1998. Question 26 appeared on the SCA as follows:

Question 26. Your Police Record - Other Offenses

In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

Applicant responded "no" to question 26. His "no" response was false because, as noted above, he had been arrested, charged and/or convicted on a variety of charges on two occasions in 1994 and once in 1998.

Question 27 appeared on the SCA as follows:

Question 27. Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example marijuana cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

Applicant responded "no" to Question 27. His response was false because he had used cm on a regular basis through at least 1993.

Applicant has consistently denied that he intended to mislead the Government about his criminal background or drug use when he responded "no" to these questions. During an interview with a DSS Special Agent in November 2000, the certified results of which are in evidence as Exhibit 6, applicant stated that he had listed only his 1988 arrest on the SCA "because he felt that was his main arrest and that once his background investigation commenced, the other arrests would surface and then he could elaborate on them." At the hearing he testified, in essence, that he followed his secretary's advice that as long as he mentioned his 1988 arrest for Possession and the fact that he was on probation, he could properly respond "no" to these two questions (TR at 52-53). He later testified that he does not know why he responded "no" to question 27 (TR at 68), and doesn't know why he did not list the other arrests in response to question 26 (TR at 69-70). Based on the evidence presented, I do not find applicant's testimony that he was not trying to mislead the Government with his "no" responses to be credible and worthy of belief.

Two letters and a performance appraisal were admitted into evidence (Exhibits A, B and C). These documents establish that applicant has performed well at his job since 1997.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Guidelines are applicable:

Criminal Conduct

Disqualifying Conditions

1. E2.A10.1.2.1: Criminal conduct.
2. E2.A10.1.2.2: A single serious crime or multiple lesser offenses.

Mitigating Conditions

None.

Personal Conduct

Disqualifying Conditions

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

Mitigating Conditions

None.

CONCLUSIONS

The evidence establishes that applicant has a long history of criminal conduct. Beginning in 1988, and continuing to November 1998, applicant committed numerous crimes. These crimes, which involved possessing illegal drugs, failing to return a rental car, and fraudulently using a credit card, among others, reflect adversely on his judgment, reliability and trustworthiness, and strongly suggest that he cannot be relied upon to safeguard classified information.

The evidence further establishes that beginning in the late 1990s, applicant started to turn his life around. He has not used an illegal drug in over five years, he has been gainfully employed since 1997, and he currently has a stable relationship with his girlfriend. Even his former probation office commented in an October 2001 letter (Exhibit 7) that, despite his extensive criminal history, applicant has managed to become a contributing member of the community. These are positive factors in his favor, and had applicant not intentionally falsified material facts on his SCA, they would have gone a long way toward mitigating his criminal conduct. However, applicant did falsify material facts on the SCA, and in assessing applicant's current security-worthiness, this dishonest and criminal conduct⁽²⁾ cannot be ignored. Considering the evidence as a whole, particularly the recency of applicant's falsification of the SCA, it is not now clearly consistent with the national interest to grant him access to classified information.

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. He was also fined \$250.00, ordered to perform one hundred hours of community service, and placed on probation for three years.
2. This conduct violated 10 U.S.C. 1001.