

DATE: June 5, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-06442

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 28-year-old Applicant intentionally falsified material information about the extent of his marijuana use in a May 2000 security clearance application and in an October 2000 sworn statement to the Defense Security Service, before telling the truth. Finally telling the truth does not mitigate or extenuate the negative effect of the falsifications. Clearance is denied.

STATEMENT OF THE CASE

On November 2, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On December 12, 2001, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the basis of the written record, without a hearing. Department Counsel submitted a File of Relevant Material (FORM) on February 4, 2002. The FORM includes nine Government Exhibits (GX) 1- 9. Instructions accompanying the FORM informed Applicant that any response to the FORM had to be submitted within 30 days of receipt of the FORM. Through Department Counsel, Applicant timely submitted a response to the FORM, consisting of four pages, marked and admitted as Applicant's Exhibits (AX) A - D.

The case was assigned to me for decision on April 1, 2002.

FINDINGS OF FACT

Applicant is a 28- year-old employee of a defense contractor. The company is seeking a security clearance for Applicant

so that he will qualify for a classified position.

Based on the totality of the record evidence, I also make the following findings of fact under each of the allegations in the SOR:

Guideline E (Personal Conduct)

SOR 1.a. - In a Security Clearance Application (SCA), dated May 9, 2000, Applicant responded to Question "**27 Your Use of Illegal Drugs and Drug Activity**," by answering "Yes" and citing marijuana use on only one occasion, on June 4, 1995, when he knew and sought to conceal that he had actually used marijuana with varying frequency, on at least 15 occasions between 1989 and May 1999.

SOR 1.b. - In a signed sworn statement to an agent of the Defense Security Service (DSS),

dated October 14, 2000, Applicant deliberately falsified material facts by claiming that he had used marijuana on only one occasion, in June 1995, when he knew and sought to conceal the true nature of his marijuana use, as cited in 1.a., above.

Applicant is highly thought of by his church leader and two work supervisors (AX B, C, and D).

POLICIES

GUIDELINE E (Personal Conduct)

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Condition that could raise a security concern and may be disqualifying include:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or [other] form used . . . to determine security clearance eligibility
3. Deliberately providing false or misleading information concerning relevant matters to an investigator . . . in connection with a personnel security or trustworthiness determination.

Condition that could mitigate security concerns include:

None

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior.

CONCLUSIONS

All DOHA decision must be based on the contents of the record evidence, and not on speculation as to questions not

asked and information not obtained. The record in this case is relatively sparse but it clearly establishes that Applicant knowingly lied about the extent of his marijuana use when completing his SCA in ay 2000 (GX 4) and again when being interviewed by DSS on October 14, 2000 (GX 5). He admitted the more extensive use of marijuana only in his second interview with DSS, on October 16, 2000 (AX 6).

Applicant's explanation for the discrepancy appears to be that shortly after his first October 2000 statement, he remembered the more extensive use of marijuana cited in the second sworn statement two days later and decided he should tell the truth. It could also be construed as meaning that he had known the truth all along and finally decided he had better let that truth come out. The contents of the FORM do not explain how and/or why the second interview with DSS came about. However, Applicant's response to the FORM does contain an explanation. In AX A, Applicant states that after completing the first statement, "[I] had a chance to dwell on the matter, . . . I felt uneasy with the course I had taken [and was] compelled by my conscience to correct the statement I made on October 14, 2000." In context, these statements compel the conclusion that Applicant knew that he had been lying about the extent of his marijuana use in his first DSS interview, and implicitly, in his earlier SCA.

Another problem for Applicant arises in that he has not provided any explanation for why he lied when answering Question 27 on the May 9, 2000 security clearance application (GX 4). The SCA and the first interview were given some five months apart (May 2000 and October 2000) and both claim a single use of marijuana. Yet, Applicant does not explain why the true extent of his marijuana use and his decision to tell the truth did not occur to him until after the first October 2000 interview with DSS.

Additionally, the marijuana use finally acknowledged by Applicant was "approximately 15 occasions during a period of about 10 years [with my] last use being around May of 1999" (GX 6).

The above facts, as provided by Applicant, establish that Applicant's last use of marijuana occurred only about one year prior to his completion of the SCA. I find it impossible to conclude, on the written record available to me, that Applicant forgot the 10 years of marijuana use that ended only a year prior to the SCA. I am also concerned that in the first 2000 DSS interview (GX 5), Applicant stated that his one time use of marijuana was in 1995, while only two days later, in his second 2000 DSS interview, he stated that his last use of marijuana was in May of 1999 (GX 6).

Based on the totality of the evidence I conclude that Applicant *did* intentionally falsify his answer to Question 27 on the SCA and *did* intentionally provide false material information during his first October 2000 DSS interview. Whatever the actual reasons may have been for Applicant's admissions on his second 2000 DSS interview, he has not mitigated or explained why he lied in the first place on both earlier occasions. The evidence does not support a conclusion that Applicant had previously forgotten a repeated use of marijuana that had ended only the previous year but remembered a single use that had occurred some five years earlier. Applicant's contention lacks credibility.

The absence of live testimony necessarily restricts me to consideration of the written record and that record contains more questions than answers and clearly does not demonstrate any acceptable explanations that mitigate or extenuate the falsifications. Applicant's change of story reflects positively on him, but not to the extent that outweighs the negative impact of his two falsifications.

Likewise, the positive input from three individuals who know him (AX B, C, and D) are certainly helpful, but do not directly address the issue of Applicant's falsifications, nor do they mitigate the Government's reasonable concerns.

Disqualifying Conditions 2 and 3 (deliberately providing false information) clearly apply. On the other hand, the existence of any Mitigating Conditions (MC) is problematic. MC 2 does not apply since the two falsifications cannot be construed as an isolated incident. I have carefully considered MC 3. Applicant did make an effort to correct the false information he provided to DSS only two days after he first lied to DSS, and before he was confronted with the truth, *but* there was certainly no prompt and good-faith effort to correct his lies after he falsified the SCA in May 2000. Consequently, MC 3 has not been established. I also conclude that none of the generic factors contained in Enclosure 2 to the Directive, taken individually or collectively, point to a decision favorable to Applicant.

Other than actual violation of the rules governing use and protection of classified information and materials, falsifications in SCAs and in interviews with DSS go most directly to the heart of the security clearance eligibility

process. By his own words, Applicant has created serious doubts about his judgment, reliability, and trustworthiness, and those doubts must be construed against his having access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

GUIDELINE E (Personal Conduct) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE