

DATE: April 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19443

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

James Winston Gleave, Esq.

SYNOPSIS

Applicant's conviction and sentence of three years in prison disqualifies him from receiving a security clearance under 10 U.S.C. 986. Clearance is denied.

STATEMENT OF THE CASE

On August 23, 2002, 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 September 26, 2002. The case was assigned to the undersigned on January 16, 2003. A Notice of Hearing was issued on February 4, 2003, and the hearing was held on February 26, 2003. The transcript was received on March 12, 2003.

FINDINGS OF FACT

Applicant is forty-eight years of age. He has worked for defense contractors since 1984.

In 1973, while attending college, applicant and two of his roommates were taking a joy ride when they decided they were going to blow up a billboard with dynamite that one of his roommates had brought from home. Applicant watched as one of his roommates actually dynamited the billboard. Neither applicant nor his roommates were trying to hurt anyone or to "make a statement." To them, it was just a teenage prank.

Applicant left college and moved back home with his parents shortly after the incident. Approximately one year later applicant was paid a visit by ATF agents who asked him about the incident. Applicant told the agents about the incident,

and he was eventually charged with Explosives - Using Dynamite, a felony. In 1974, he was convicted of the charge and sentenced to three years in prison (suspended), ordered to pay approximately \$3,000.00 in restitution (which he did), and was placed on probation for three years.

Applicant completed a Security Clearance Application (SCA) in November 2000 (Exhibit 2). On said application, applicant was asked if he had ever been charged with or convicted of (1) any felony offense or (2) a firearms or explosives offense. Applicant responded "no" to both questions. These responses were obviously false. Applicant admits that his responses were false, but denies that he intentionally provided them. He testified that he "just forgot" about the incident (TR 34). He further testified that he hadn't known he had been convicted of a felony until he received security clearance related paperwork in 2002 (TR at 34, 37). Although applicant's testimony that he did not know he had been convicted of a felony was believable, his testimony that he "just forgot" about the incident was not. Considering how much this one incident stands out in applicant's otherwise incident-free life, and how traumatic it was for him (TR at 37), it is simply not credible that he would not have recalled this incident. Based on the foregoing, I find that applicant intentionally provided false material information to the Government when he denied that he had ever been charged with or convicted of a "firearms or explosives offense."⁽¹⁾

Two of applicant's coworkers appeared at the hearing. The first, applicant's former supervisor, testified that he has known applicant since 1999, and he believes applicant has the utmost integrity. He further testified that applicant has a reputation for honesty among his coworkers. The second witness has been applicant's close friend and a coworker for eighteen years. He also believes applicant is a man of integrity.

Letters from five other individuals (friends, coworkers and neighbors) who know applicant well were admitted into evidence (Exhibits C through G). These individuals are of the opinion that applicant is an honest and trustworthy person.

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, concealment or falsification of relevant and material facts from any personnel security questionnaire.

Mitigating Conditions

None.

CONCLUSIONS

The evidence establishes that in 1973, applicant and two college roommates blew up a bill board with dynamite that one of the roommates had brought from home. As a result, applicant was charged with and convicted of a felony. He was sentenced to three years in prison (suspended) and ordered to pay approximately \$3,000.00 in restitution. Applicant paid the restitution and completed probation without incident.

Without minimizing the seriousness of this criminal conduct, it was essentially a college "prank" that occurred almost thirty years ago. On a common sense basis, this incident has little or no current security significance. Nevertheless, I am constrained to follow the law, and given applicant's sentence of three years in prison, this incident disqualifies applicant from receiving a security clearance under 10 U.S.C. 986. Accordingly, Guideline J is found against applicant.

With respect to the falsification issue, the evidence establishes that applicant intentionally concealed the fact that he had been charged with and convicted of an "explosives" offense when he completed the SCA in November 2000. This conduct reflects adversely on his judgment, reliability and trustworthiness. Given the recency of this dishonest conduct, and applicant's inability or unwillingness to acknowledge it, I cannot conclude that he can now be relied upon to be truthful with the Government. For this reason, 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. Applicant's intentional falsification constitutes criminal conduct under 18 U.S.C. 1001.