

DATE: October 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19447

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The recency of applicant's falsification of material facts on his SCA 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 February 11, 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 March 4, 2002, 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 April 26, 2002. Applicant did not file a response to the FORM. The case was assigned to me on August 7, 2002.

FINDINGS OF FACT

Applicant is a 31 year old electronics technician.

In January 1998, applicant and his wife were involved in a domestic dispute that resulted in physical injuries to the wife. Applicant was intoxicated at the time of the incident. Although no charges were filed against him, applicant, who was in the United States Navy at the time, was eventually required to attend a one week "educational alcohol course" (Exhibit 5).

Applicant completed and executed a Security Clearance Application (SCA) on February 5, 2001. Among the questions applicant was required to answer were questions 26 and 30, which appeared on the SCA as follows:

26. Your Police Record - Other Offenses

In the last 7 years, have you ever 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.

30. Your Use of Alcohol

In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?

Applicant responded "no" to both questions. These responses were false because, as a result of the January 1998 incident referred to above, applicant (1) was arrested and (2) attended a one week "educational alcohol course."

In his response to the SOR, applicant admitted that he "falsified material facts on questions #26 and #30," and offered explanations for his conduct. With respect to Question 26, applicant explained that he "interpreted the phrase 'convicted of any offense' as meaning a Captain's Mast resulting in a Non- Judicial Punishment (NJP), or a loss in rank or forfeiture of pay, which never occurred for this whole incident." With respect to Question 30, he explained that his "no" response was "due to a simple oversight on (his) behalf, (he) didn't fully read the question because the questions started to seem repetitive . . ." Based on the evidence presented, including applicant's explanations, I find that applicant intentionally provided false, material information to the Government when he responded "no" to questions 26 and 30.

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.

CONCLUSIONS

The evidence establishes that in 1998, applicant was involved in a domestic dispute with his wife that resulted in his arrest and his attendance at an "educational alcohol course." The evidence further establishes that applicant intentionally concealed both this arrest and alcohol counseling from the Government when he responded "no" to questions 26 and 30 on the SCA he executed in February 2001.

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 a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders. In this case, the recency of applicant's dishonesty, together with the lack of any evidence from individuals who know him well (e.g., family, friends, co-workers, supervisors) indicating that applicant is a reliable and trustworthy individual, precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information.

FORMAL FINDINGS

PARAGRAPH 1: 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