

DATE: August 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23491

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Everett Cuskaden, Esq.

SYNOPSIS

In view of the recency and extent of applicant's falsification of material facts on his Security Clearance Application (SCA), it is not clearly consistent with the national interest to grant him access to classified information at the present time. Clearance is denied.

STATEMENT OF THE CASE

On January 13, 2003, 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 February 12, 2003. The case was assigned to the undersigned on March 19, 2003. A Notice of Hearing was issued on April 21, 2003, and the hearing was held on May 21, 2003. The transcript was received on June 6, 2003.

FINDINGS OF FACT

Applicant is a 47 year old employee of a defense contractor.

Applicant executed an SCA on August 31, 2000 (Exhibit 1). The Government alleges that applicant intentionally provided false material information in response to three questions on the SCA.

In response to Question 6, which asked applicant to list his "employment activities," applicant failed to list his employment at both a retail store and an avionics company. Applicant testified that he did not list these two jobs because both lasted less than 90 days, and he "clearly heard" the company security officer say that employment for less

than 90 days did not have to be disclosed (TR at 20-21).⁽¹⁾ He further testified that after he received the SOR he called the security officer to confirm what she said, but during the telephone conversation, she denied saying employment for less than 90 days did not have to be disclosed. He then testified that "it must have been my misunderstanding. I don't know" (TR at 21).

In response to Question 20, which asked, "Has any of the following happened to you in the last 10 years? - Fired from job; Quit a job after being told you'd be fired; Left a job by mutual agreement following allegations of misconduct; Left a job by mutual agreement following allegations of unsatisfactory performance; Left a job for other reason under unfavorable circumstances," applicant stated "no." Applicant's response was false because he was fired by the retail store mentioned above in 1998 (TR at 19; Exhibit 2), and he quit his job at a mill in 1999 after he was suspended by management for upsetting a customer (TR at 33; Exhibit 2), a scenario which clearly qualifies as "left a job for other reason under unfavorable circumstances." Applicant testified that he did not mention his firing from the retail store because he believed that, if he didn't have to mention this employment in response to Question 6 (because it lasted less than 90 days), then he didn't have to mention his firing in response to Question 20 (TR at 35). He further testified that he did not believe he left the mill job under unfavorable circumstances (TR at 34).

In response to Question 13, which asked applicant to disclose his employment by a foreign government, firm or agency, applicant failed to disclose his employment at a Japanese school in 1989 or 1990. Applicant testified that he doesn't know why he failed to disclose this employment (TR at 17). He later testified that either he forgot about it or he just didn't think it was relevant (TR at 37).

Applicant denies intentionally concealing any information from the Government (TR at 31, 40).

Applicant's wife, to whom he has been married for 17 years, is a citizen of Japan. Although he and his wife have resided in the United States since 1997, she has not applied for United States citizenship. Applicant's sister-in-law is a citizen and resident of Japan. Applicant's relationship with her is not close. Applicant's father-in-law died two years ago.

A man who has known applicant for five or six years appeared at the hearing and testified that applicant is a "by-the-book honest guy" (TR at 61).

An individual currently serving in the military who has worked with applicant for about a year appeared at the hearing and testified that applicant is a reliable and trustworthy individual (TR at 63-65).

Applicant's next door neighbor for the past several years appeared at the hearing and testified that applicant is reliable and trustworthy (TR at 67-69).

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:

Personal Conduct

Disqualifying Conditions

1. The deliberate omission of relevant and material facts from any personnel security questionnaire.

Mitigating Conditions

None.

Foreign Influence

Disqualifying Conditions:

1. An immediate family member is a citizen of a foreign country.

Mitigating Conditions:

1. A determination that the immediate family members in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States.

CONCLUSIONS

With respect to Guideline E, the evidence establishes that applicant failed to disclose material information concerning his employment history in response to three questions on the SCA. I have carefully considered applicant's explanations for his false responses, and I do not find them to be credible. Accordingly, I conclude that his falsification of material facts on the SCA was intentional.

Applicant's dishonest conduct is extremely troubling. 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 good judgment, reliability and trustworthiness required of clearance holders.

In this case, I have considered the strong character references applicant offered into evidence, including Exhibits A through D. However, given the recency and extent of his dishonesty, as well as his less than credible testimony that he was not trying to conceal anything from the Government with his responses to the three questions on the SCA, I cannot conclude that applicant can be relied upon to be truthful with the Government at the present time. For this reason, Guideline E is found against applicant.

With respect to Guideline B, the evidence does not establish that applicant is vulnerable to foreign influence, notwithstanding the facts that (1) his wife is a citizen of Japan, and (2) his sister-in-law is a citizen and resident of Japan. There is simply no credible evidence that these family members are in a position to be exploited by Japan in a way that could force applicant to choose between loyalty to these family members and loyalty to the United States. Based on these facts, Guideline B is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: FOR 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. In a signed, sworn statement that he gave to the Defense Security Service (DSS) in August 2001 (Exhibit 2), applicant stated that the security officer said "it was not necessary to list employments of less than 30 days" (emphasis added). Applicant could not offer any reason for the discrepancy between his testimony and his statement (TR at 43-44).