

DATE: May 29, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23482

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In view of applicant's 20 plus years of criminal activity, his dishonesty directed at the Government, and his failure to offer any credible evidence from independent sources indicating that he has reformed and is now reliable and trustworthy, it is not now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On August 15, 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 21, 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 October 15, 2002. Applicant replied to the FORM on November 22, 2002. The case was assigned to me on December 10, 2002.

FINDINGS OF FACT

Applicant is 36 years old and is employed as a senior engineer by a defense contractor.

Applicant used marijuana with varying frequency, at times several times a day, from approximately 1978 to December 1999. During this time he purchased marijuana, on occasion as much as a pound of it at a cost of over \$1,000.00. Between 1978 and 1996, he sold marijuana on numerous occasions. Between 1992 and 1994, his sales of marijuana netted him a substantial profit.

Applicant used hashish approximately three to four times a year from the time he was in junior high school until approximately 1992. He sold hashish to three or four people in 1992.

Applicant used powered cocaine with varying frequency, at times four to five times a week, from approximately 1982 to 1997. He smoked crack cocaine approximately once a month from 1988 to 1995. During a two month period in 1988, he sold cocaine to three or four customers several times a week.

Applicant used LSD with varying frequency, at times once or twice a month, from 1982 to 1997. During a two month period in 1986 he sold LSD.

Between 1980 and 1993, applicant experimented with quaaludes, placidyl pills, crystal methamphetamine, speed, psilocybin mushrooms and opium mixed with hashish.

Applicant and two friends traveled to Holland in 1992. While in Holland, applicant and his two friends went to the post office where the friends mailed at least two packages containing marijuana and hashish back to the United States. Applicant sold some of the mailed drugs after he returned home. Applicant smuggled an additional two grams of marijuana and five or six grams of hashish into the United States by hiding the drugs inside a decorative candle that he carried aboard the commercial airline that he flew from Holland to the United States.

In 1984, applicant was charged with Prowling. He was convicted of the charge, sentenced to thirty days in jail (suspended), fined \$100.00, and placed on probation for three months.

In 1986, applicant was arrested and charged with Attempted Kidnaping and Impersonation of a Law Enforcement Officer. The charges were dismissed.

In 1988, applicant was charged with, and convicted of, Possession of Cocaine. He was sentenced to one day of probation.

In 1993, applicant was arrested for Battery-Spouse. No charges were filed. Applicant and his ex-wife were involved in numerous physical altercations between 1990 and 1995.

In 1993, applicant was convicted of Possession of Marijuana. He was sentenced to one month in jail (suspended).

In 1998, applicant was charged with Leaving the Scene of an Accident with Property Damage. He pleaded nolo contendere to the charge, was fined \$50.00, and ordered to pay restitution to the two complainants in the amounts of \$819.25 and \$2,151.00.

In a signed, sworn statement that he gave to a DSS agent on May 24, 1999, applicant intentionally provided false, material information about his drug smuggling activities during his return trip from Holland in 1992 when he stated: "I did not bring any drugs back to the U.S. being scared of U.S. Customs inspectors and their dogs." Applicant claims he lied to DSS because he was afraid of getting into trouble if he admitted to the drug smuggling. ⁽¹⁾

In his response to the SOR, applicant stated that he was painfully honest about his past during his background investigation. He further stated that his "experiences over the past three years in my profession have strengthened my personal resolve and commitment to a life and lifestyle for which my family and I can be proud."

In his response to the FORM, applicant stated, among other things, that (1) "I am proud to say I am drug free, and have been so since 1999, and will remain drug free," and (2) "I have had no criminal activity since 1993." Although there is no evidence that applicant's first statement is not true, his second statement is clearly false. In addition to his illegal sales of drugs subsequent to 1993 and his intentional falsification of material facts in May 1999 (a felony under 18 U.S.C. 1001), in 1998 he was charged with, and pleading nolo contendere to, Leaving the Scene of an Accident with Property Damage.

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 conditions are applicable:

Drug Involvement

Disqualifying Conditions:

1. E2.A8.1.2.1: Any drug abuse.
2. E2.A8.1.2.2: Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Mitigating Conditions:

None.

Personal Conduct

Disqualifying Conditions

2. E2. A5.1.2.3: Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

Mitigating Conditions

None.

Criminal Conduct

Disqualifying Conditions

1. E2.A10.1.2.1: Allegations or admissions of criminal conduct.
2. E2.A10.1.2.2: A single serious crime or multiple lesser offenses.

Mitigating Conditions

None.

CONCLUSIONS

With respect to Guideline H, the evidence establishes that applicant used a wide variety of illegal drugs from approximately 1978 to December 1999. The evidence further establishes that during this time he also sold a number of these drugs (e.g., marijuana, hashish, cocaine and LSD), and that he was involved in the smuggling of cannabis into this country. The evidence further establishes that applicant has not told the Government the truth about his drug involvement. He has intentionally provided false information about his drug use, and about his involvement in the smuggling of cannabis into this country. Applicant's long involvement with illegal drugs, and his willingness to lie about it, reflects adversely on his judgment, reliability and trustworthiness, and strongly suggests that he cannot be relied upon to safeguard classified information.

Applicant's evidence of reform consists of his own statements, particularly his statements made in response to the FORM that (1) since 1999 he has been "drug free" and (2) he "will remain drug free." In view of his prior intentional misrepresentations of material facts about his drug involvement, these uncorroborated statements cannot be considered credible evidence of reform. This is particularly so in light of applicant's use of marijuana after stating, in his May 24, 1999 signed, sworn statement, that he had no "intention of using drugs in the future." For this reason, Guideline H is found against applicant.

With respect to Guidelines E and J, the evidence establishes that applicant has a long history of criminal activity, both charged and uncharged. Although much of this criminal activity ceased years ago, his 1999 intentional falsification of material facts is too recent and too serious to overlook. 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 about his background, it is extremely difficult to conclude that he or she nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders. In this case, given applicant's 20 plus years of criminal activity, his dishonesty directed at the Government, and his failure to offer any credible evidence from independent sources indicating that he has reformed and is now reliable and trustworthy, it is not now clearly consistent with the national interest to grant him access to classified information. For this reason, Guidelines E and J are found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: AGAINST THE APPLICANT

PARAGRAPH 3: 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. Although not alleged in the SOR, applicant also lied about his drug use. In the May 24, 1999 statement he stated, among other things, that his last use of cocaine "was in the early 1990s, possibly 1991," and the last time he "smoked marijuana was in Aug 95." In fact, as noted above, he last used cocaine in 1997, and he used marijuana on a regular basis from 1994 to June 1998.