

DATE: March 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25608

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although applicant's criminal activity is not recent, his failure to offer any credible evidence from independent sources indicating that he is now reliable and trustworthy precludes a finding that he has reformed. Clearance is denied.

STATEMENT OF THE CASE

On September 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 October 2, 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 on or about December 6, 2002. Applicant did not file a response to the Government's written case. The case was assigned to me on January 14, 2003.

FINDINGS OF FACT

Applicant is forty-two years of age.

In 1979, applicant was arrested and charged with (1) Theft, 2nd degree and (2) Taking a Motor Vehicle Without Permission of Owner. Both offenses were felonies. He was convicted of both charges and sentenced to five years in prison. Applicant was paroled on two occasions, but each time his parole was revoked for violations of his parole conditions.

In 1995, applicant received an Article 15 for Falsifying an Official Statement, Fraudulent Enlistment. The charges were based on applicant's failure to disclose his arrest record on his enlistment papers when he joined the Army in 1994. He

was given seven days of extra duty, a reduction in rank (suspended), and was ordered to forfeit seven days pay (suspended). In a signed, sworn statement that he gave to the Defense Security Service (DSS) in February 2001 (Exhibit 8), applicant stated that he had informed his recruiter of the arrests and was told that since they were not documented, he did not have to list them on his recruitment papers. In the Army investigative records (Exhibit 6), however, the recruiter stated that applicant never told him about the arrests. Based on the punishment applicant received, it is apparent the Army did not believe applicant.

In the February 2001 statement to the DSS, applicant stated the following:

I would like to state that when I was a teenager, I was getting myself into problems and not being a good citizen. For the past twenty years I have had no additional problems with police activity.

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

1. E2.A10.1.3.1: The criminal behavior was not recent.

CONCLUSIONS

The evidence establishes that in 1979, applicant was convicted of two felonies and sentenced to five years in prison. The evidence further establishes that in 1994, applicant falsified his Army enlistment papers by not disclosing his prior arrests, and that as a result, he received an Article 15. Applicant's criminal and dishonest conduct reflects adversely on his judgment, reliability and trustworthiness, and strongly suggests that he cannot be relied upon to safeguard classified information.

Applicant failed to establish that he has reformed. Although the passage of time since applicant engaged in the criminal conduct (the felonious conduct occurred over twenty years ago and the Article 15 occurred approximately eight years ago) is a mitigating factor, applicant's failure to offer any credible evidence from any independent sources (e.g., family, coworkers, supervisors, friends) indicating that he is now a reliable and trustworthy person precludes a finding that he now possesses the good judgement, reliability and trustworthiness required of individuals with 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