

DATE: April 13, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-03171

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's conviction and sentence of more than one year of incarceration disqualifies him from receiving a security clearance under 10 U.S.C. 986. Clearance is denied.

**STATEMENT OF THE CASE**

On August 26, 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 an unknown date prior to October 8, 2003, and again on November 14, 2003. The case was assigned to the undersigned on January 16, 2004. A Notice of Hearing was issued on February 27, 2004, and the hearing was held on March 18, 2004. The transcript was received on April 6, 2004.

**FINDINGS OF FACT**

Applicant is a 32 year old computer operator.

Applicant completed a Security Clearance Application (SCA) in March 1999 (Exhibit 1). On said application, applicant was asked if he had "illegally used a controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs" during the previous seven years. Applicant responded "no." Although applicant has a history of illegal drug use, the evidence does not support a finding that he used any illegal drugs during the seven years prior to arch 1999. [\(1\)](#) Accordingly, this allegation is found for applicant.

Applicant was interviewed by a Special Agent of the Defense Security Service (DSS) on several occasions in late 2001. During one or more of these interviews, applicant told the agent that he had not used illegal drugs (TR at 24-25).

Applicant knew that this was not true.<sup>(2)</sup> In fact, applicant had used LSD, cocaine, methamphetamine, and marijuana. He doesn't know why he lied to the agent (TR at 45).

In September 1997, applicant was arrested and charged with Public Intoxication.

In April 1996, applicant was arrested and charged with Driving Under the Influence with a Blood Alcohol Content of .08% or more and Driving on a Suspended License. He pleaded no contest to both charges and was sentenced to 580 days of incarceration (suspended), fined \$2,547.35, and placed on probation for five years.

In December 1995, applicant was arrested and charged with Petty Theft.

In September 1995, applicant was charged with Driving on a Suspended License. He was found guilty.

In January 1995, applicant was arrested and charged with (1) Fight and (2) Challenge to Fight in a Public Place. He was convicted of the charges and sentenced to 15 days in jail.

In 1994, applicant was arrested and charged with Driving Under the Influence (DUI). He was found guilty and placed on probation.

In August 1993, applicant was arrested and charged with DUI.

In April 1993, applicant was arrested and charged with Shoplifting.

In 1991, applicant was arrested and charged with DUI.

Applicant has not been arrested since September 1997. Since participating and successfully completing some type of alcohol and/or drug rehabilitation program seven or eight years ago, he has not abused alcohol or drugs.<sup>(3)</sup>

### **CONCLUSIONS**

With respect to Guideline E, the evidence establishes that in late 2001, applicant intentionally provided false material information about his illegal drug use to a DSS Special Agent. This conduct reflects adversely on applicant's judgment, reliability and trustworthiness. It also requires application of Disqualifying Condition E2.A5.1.2.3. Having been offered (1) no reasonable explanation for this dishonest conduct, (2) no evidence which would qualify applicant for any of the formal Mitigating Conditions, and (3) little or no evidence from which I can conclude applicant can now be relied upon to be truthful with the Government, Guideline E is found against him.

With respect to Guideline J, the evidence establishes that in 1996, applicant was convicted of DUI and sentenced to 580 days of incarceration, all of which was suspended. On a common sense basis, given applicant's many years of clean and sober living, this incident has little current security significance. Nevertheless, I am constrained to follow the law, and given applicant's sentence of more than one year of incarceration, this incident disqualifies him from receiving a security clearance under 10 U.S.C. 986.<sup>(4)</sup> Accordingly, Guideline J is found against applicant.

### **FORMAL FINDINGS**

#### **PARAGRAPH 1: AGAINST THE APPLICANT**

Subparagraph 1a: For the Applicant

Subparagraph 1b: Against the Applicant

#### **PARAGRAPH 2: AGAINST THE APPLICANT**

All subparagraphs found against applicant except for that portion of subparagraph 2d which alleges applicant tested positive for methamphetamine and marijuana.

**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.

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Joseph Testan

Administrative Judge

1. Exhibits 14 and 15, which refer to a positive urinalysis, do not, standing alone, constitute credible proof that applicant used illegal drugs during this time period.
2. Applicant's intentional falsification constitutes criminal conduct under 18 U.S.C. 1001.
3. Applicant was unable or willing to provide much information about this program. *See*, TR at 41-44.
4. *See*, Footnote 1 of Disqualifying Condition c of the Criminal Conduct guideline.