

DATE: April 11, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-06212

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's failure to offer any explanation for his intentional falsification of material facts on a Security Clearance Application (SCA) precludes a finding that he can be relied upon to be honest with the Government. Clearance is denied.

STATEMENT OF THE CASE

On May 23, 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 July 11 and September 15, 2003, 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 March 29, 2004. Applicant did not file a response to the FORM. The case was assigned to me on June 3, 2004.

FINDINGS OF FACT

Applicant is a 22 year old employee of a defense contractor.

Applicant used cocaine "once weekly" from July to October 1999. He used marijuana occasionally for about five months when he was approximately 16 years of age. He used LSD multiple times at age 17 and/or age 18.

In November 1999, applicant sold cocaine to an undercover policeman. In March 2000, he was arrested and charged with Distribution of Cocaine, a felony. In June 2000, he was found guilty of the charge, and in August 2000, the Court continued the case for one year upon the following conditions: Applicant (1) did not violate any law, (2) reported to, and

complied with all rules and regulations set by, a Probation Officer, (3) completed 300 hours of community service, and (4) stayed in good standing at the school program he was attending. In July 2001, the Court vacated the guilty finding on the charge of Distributing Cocaine and found applicant guilty of Obstructing Justice, a misdemeanor. The Court then sentenced applicant to 12 months in jail, which was suspended for five years on the condition that he violated no laws. Applicant was also placed on indefinite probation, and ordered to pay court costs of \$200.00. Applicant states that he has learned a hard lesson from this illegal activity and will not repeat it (Exhibit 7).

Applicant intentionally provided false, material information to the Government when, in response to Question 27⁽¹⁾ on an SCA generated by applicant in October 1999, he denied that he had illegally used a controlled substance "since age 16, or in the last 7 years, whichever is shorter." In fact, as noted above, applicant had used cocaine and LSD "since age 16."⁽²⁾

In March 2000 and October 2001, applicant received written warnings from his employer regarding his repeated tardiness and absences.

CONCLUSIONS

With respect to Guideline J, the evidence establishes that in March 2000, applicant was charged with Distributing Cocaine to an undercover policeman in November 1999, and that in July 2001, he was found guilty of the lesser crime of Obstructing Justice. This conduct reflects adversely on applicant's judgment and reliability, and requires application of Disqualifying Condition E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*).

Based on the passage of time since this crime occurred, applicant qualifies for Mitigating Condition E2.A10.1.3.1 (*the criminal behavior was not recent*). And, based on applicant's sincerely expressed remorse over his involvement with the sale of cocaine, and the fact there is no evidence of any subsequent criminal activity, I conclude he qualifies for Mitigating Conditions E2.A10.1.3.4 (*the factors leading to the violation are not likely to recur*) and E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*).⁽³⁾

Based on the foregoing, I conclude that applicant's criminal conduct is unlikely to recur. Accordingly, Guideline J is found for him.

With respect to Guideline E, applicant's falsification of material facts on the SCA 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. Applicant's intentional falsification requires application of Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*).

Applicant's falsification appears to be an isolated incident,⁽⁴⁾ it was not recent, and he appears to have subsequently provided the correct information about his drug use voluntarily. For these reasons, he qualifies for Mitigation Condition E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*). He does not qualify for any other Mitigating Conditions.

Although applicant's falsification took place over four years ago, and appears to be an isolated incident of dishonest behavior, his failure to offer *any* explanation for this knowing and willful dishonesty directed at the Government precludes me from concluding he has reformed and can now be relied upon to be honest with the Government. For this reason, Guideline E is found against applicant.⁽⁵⁾

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

PARAGRAPH 2: AGAINST THE APPLICANT

Subparagraphs 2a through 2e: for the applicant

Subparagraph 2f: 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. Department Counsel concedes that applicant did not falsify his responses to Questions 21, 24, and 29 as alleged in the SOR. Accordingly, SOR Allegations 2c, 2d, and 2e are found for applicant.
2. Since it is not clear if applicant used marijuana "since age 16" this allegation is found for applicant to the extent it incorporates applicant's marijuana use.
3. I reach this conclusion notwithstanding the fact applicant is most likely still on probation.
4. I have not considered applicant's alleged falsification of Exhibit 10 (FORM, Page 4). From the record, I cannot tell with certainty who prepared it, the purpose for which it was prepared, or where it came from.
5. To the extent Guideline E incorporates applicant's cocaine use and the warnings he received from his employer, Guideline E is found for applicant. Applicant's cocaine use is mitigated by the passage of time and his credibly stated intention not to use illegal drugs anymore. The warnings from applicant's employer are mitigated by the passage of time since he received them and the relatively minor nature of the "offenses."