

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant's intentional falsifications of material facts on a Questionnaire for National Security Positions (QNSP) and during an interview with the Defense Security Service (DSS) precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

CASENO: 02-26830.h1

DATE: 02/28/2005

DATE: February 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26830

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's intentional falsifications of material facts on a Questionnaire for National Security Positions (QNSP) and during an interview with the Defense Security Service (DSS) precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On November 21, 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 December 13, 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 May 10, 2004. Applicant filed a response to the FORM on July 5, 2004. The case was assigned to me on July 29, 2004.

FINDINGS OF FACT

Applicant is a 24 year old employee of a defense contractor.

Applicant first used marijuana in about 1993. He used it on a regular basis from 1994 or 1995 to at least July 10, 2002.

In May 2000, applicant was cited/arrested for Possession of Marijuana (POM). In August 2000, he was formally charged with POM. He was subsequently found guilty, sentenced to 90 days in jail (89 days suspended), fined \$500.00, and ordered to serve 40 hours of community service. Applicant completed the community service.

Applicant received treatment for one week in September 2000 for a condition diagnosed as Cannabis Dependence. Applicant's employer referred him for this treatment after applicant tested positive for Cannabis after he was involved in an accident while on duty driving a company truck.

Applicant admits he purchased marijuana, but states in his response to the SOR that he no longer does so. In a signed, sworn statement that he gave to the DSS in July 2002, applicant stated that he intended to continue using marijuana. In his response to the SOR, however, he stated that he has "stopped the use of marijuana and do not intend to use it again."

In February 1998, applicant was arrested and charged with assault and obstruction following an altercation with a police officer. Applicant was subsequently charged in an Information with Resisting Arrest. He was placed in a Diversion program. After he completed the terms of the Program, the charge was dismissed.

Applicant intentionally provided false, material information to the Government in response to two questions on a QNSP he executed on July 12, 1999 (Exhibit 5), and during a June 21, 2002 interview with a DSS agent. With respect to the QNSP, in response to Question 26, he failed to disclose that he was arrested and charged in 1998 as noted above, and in response to Question 27, he denied that he had used marijuana during the previous seven years. During the June 21, 2002 DSS interview, he stated that he had not used marijuana since the truck accident, which was not true, and further stated that he did not know why his marijuana use was not disclosed on the QNSP because his girlfriend had completed the QNSP, when in fact, he had told his girlfriend to not to disclose his marijuana use because he didn't want to get in trouble or lose his job. Applicant's admissions of falsification are set forth in the signed, sworn statement that he gave to the DSS in July 2002.

CONCLUSIONS

With respect to Guideline H, the evidence establishes that applicant (1) used marijuana on a regular basis from 1994 or 1995 to at least July 10, 2002, (2) was involved in an accident while under the influence of marijuana in 2000, and (3) was arrested for and convicted of POM in 2000. This conduct reflects adversely on his judgment and reliability, and requires application of Disqualifying Conditions E2.A.8.1.2.1 (*any drug abuse*) and E2.A.8.1.2.2 (*illegal drug possession*).

In his response to the SOR, applicant stated he stopped the use of marijuana and does not intend to use it again. Given applicant's long-term, regular use of marijuana, and his prior dishonesty when discussing it, his uncorroborated statement of reform cannot be considered credible and worthy of belief. No Mitigating Conditions are applicable, and Guideline H is found against applicant.

With respect to Guideline E, applicant's falsifications of material facts on the QNSP, and during his interview with the DSS agent, are 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, or during a face-to-face interview with a DSS agent, 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 falsifications require 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 . . .*) and Disqualifying Condition E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to an investigator . . .*). No Mitigating Conditions apply. Based on the foregoing, Guideline E is found against applicant.

With respect to Guideline J, the evidence establishes that applicant was arrested for Resisting Arrest in 1998, and convicted of POM in 2000. The evidence further establishes that applicant intentionally provided false, material information in response to two questions on the QNSP he executed in July 1999, and during a DSS interview in June 2002.⁽¹⁾ 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*).

The recency and extent of applicant's criminal conduct, particularly his felonious conduct under 18 U.S.C. 1001, precludes application of any mitigating factors under Guideline J, and requires a denial of his security clearance request.

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. Applicant's intentional falsifications of material facts constitute felonies under 18 U.S.C. 1001.