

DATE: November 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17881

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's different and contradictory explanations for omitting material information from an electronic security clearance application (ESCA) preclude a finding that he currently possesses the good judgment, reliability and trustworthiness required of individuals with access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On March 18, 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 March 27, 2003. The case was assigned to the undersigned on June 18, 2003. A Notice of Hearing was issued on July 2, 2003, and the hearing was held on July 24, 2003. Following the hearing, applicant submitted a five page document. This document was marked as Exhibit B and admitted into evidence. The transcript was received on August 11, 2003.

FINDINGS OF FACT

Applicant is 54 years of age. He is employed as an access control officer by a defense contractor.

From 1990 through November 1992, applicant, who was married at the time, had an affair with another woman. The affair produced a child (hereinafter referred to as "the child"). Exhibit B establishes that applicant's wife, brother, and two adult children know about the affair and the child. Although it is not clear if these individuals know that applicant pays \$200.00 a month in child support to the child's mother, I find that by disclosing the affair and the existence of the child to these family members, applicant has eliminated his vulnerability to coercion, exploitation and duress.

Applicant completed an electronic security clearance application (ESCA) on March 4, 2002 (Exhibit 1). Module 9 of the ESCA required applicant to disclose the names of his "Relatives and Associates," including children. Any reasonable person reading Module 9 would understand that the child, although illegitimate, had to be listed. Applicant disclosed the names of the two children he had with his wife, but did not disclose the name of the child.

Applicant has provided at least three different explanations for not listing the child's name. First, based on his interpretation of the ESCA's requirements, he did not believe he was required to list the child (TR at 36). He explained that under his interpretation of the ESCA, (a) he did not have to list the child's name because he was not listed as the child's father on the child's birth certificate, or on any other documents (TR at 36-37), (b) he did not have to list the child's name because the child was born out of wedlock (Exhibit 2), (c) the only mandatory disclosures required by Module 9 were the names of the mother and father and "anybody that you happen to deal with that happens to be a foreign national" (TR at 47), and (d) the requirements under the ESCA "had to do with a 10 year situation," and as far as he was concerned, "it was prior to the 10 years" (TR at 41). Second, he omitted the child's name "due to confusion" on his part (SOR Response). When asked at the hearing what he was confused about, applicant replied: "I don't believe there is a requirement on the (ESCA) to put down these people that I didn't think about to start with" (TR at 49). Third, the child never even crossed his mind when he was filling out the ESCA (TR at 45-46, 55). Based on the evidence presented, I find that applicant knew he was required to list the child's name on the ESCA, and that he intentionally omitted the name of the child.

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:

Personal Conduct

Disqualifying Conditions

E2.A5.1.2.2: The deliberate omission of relevant and material facts from any personnel security questionnaire.

E2.A5.1.2.4: Concealment of information that increases an individual's vulnerability to coercion, exploitation, or duress.

Mitigating Conditions

E2.A5.1.3.5: The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation or duress.

CONCLUSIONS

Applicant's omission of the child's name, which was clearly material information, from the ESCA 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.

In this case, I have considered the positive evidence applicant offered about his background, including his 10 years of service in the U.S. Army, with at least one tour of duty in Vietnam, and his 25 years of service as a county sheriff. I have also considered the fact that applicant's falsification of the ESCA was an isolated incident,⁽¹⁾ and that when questioned by a DSS agent, applicant revealed the existence of the child. These factors, however, are insufficient to overcome applicant's incredible explanations for not disclosing the name of the child on the ESCA. By offering

different, contradictory explanations for not revealing the child's name, applicant has made it impossible to conclude that he currently possesses the good judgment, reliability and trustworthiness required of individuals with access to classified information. For this reason, Guideline E is found against applicant.

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

1. Applicant does not qualify for Mitigating Condition E2.A5.1.3.2 because the falsification was recent.