

DATE: February 18, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17975

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

C. Denise Beaudoin, Esq.

SYNOPSIS

Applicant did not falsify his Security Clearance Application (SCA) as alleged in the SOR. Clearance is granted.

STATEMENT OF THE CASE

On May 2, 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 June 4, 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 September 5, 2003. Applicant filed a response to the FORM on or about October 17, 2003. The case was assigned to me on November 4, 2003.

FINDINGS OF FACT

Applicant is a 49 year old employee of a defense contractor.

Applicant executed an SCA on April 28, 1999. In response to Question 22, which asked, "Have you ever been charged with or convicted of a firearms or explosives offense?" applicant stated "no." This response was correct. Although in 1986 he had been stopped and questioned by the police after he brandished a firearm, he was never charged with a crime.

Applicant was interviewed by a Special Agent of the Defense Security Service (DSS) in November 1999. The Government alleges that applicant lied to the agent about the aforementioned brandishing incident. I have carefully

reviewed the agent's "Certified Results of Interview" (Exhibit 6), applicant's statement (Exhibit 5), applicant's response to the SOR, and applicant's response to the FORM. Based on my review, I find that applicant did not intentionally misrepresent material facts about the incident. Once applicant realized what incident the agent was referring to, he provided the agent with sufficient information about it. He may have been mistaken about some of the facts, but that is understandable given the fact the incident had occurred about 13 years earlier.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Personal Conduct

Disqualifying Conditions

None.

Mitigating Conditions

None.

CONCLUSIONS

Applicant did not provide false material information on the SCA he executed on April 28, 1999, or to the DSS Special Agent during the November 1999 interview.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge