

DATE: October 17, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-19455

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Catherine M. Engstrom, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant intentionally provided false, material information about his alcohol and drug use to the Government. Clearance is denied.

### **STATEMENT OF THE CASE**

On September 24, 2002, 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 October 17, 2002, 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 February 27, 2003. Applicant did not respond to the FORM. The case was assigned to me on April 16, 2003.

### **FINDINGS OF FACT**

Applicant is 27 years old and is employed as an engineer by a defense contractor.

In 1994, applicant was issued a citation for underage drinking. He was not prosecuted.

In 1995, applicant was issued a citation for underage drinking. He was sentenced to "Probation Before Judgment," and was ordered to attend alcohol treatment classes. He successfully completed a 12 hour alcohol education program (Exhibit 8).

In 1996, applicant was issued a citation for drinking in public. He was not prosecuted.

In August 1998, applicant was arrested for Driving While Intoxicated (DWI). He was convicted of the charge, fined \$300.00, placed on probation for 18 months, and ordered to attend an alcohol treatment program.

A social worker who acts as the executive director of the alcohol treatment program applicant was referred to following his 1995 and 1998 alcohol-related incidents stated in an April 1999 letter that applicant "is a problem drinker who would benefit from outpatient treatment." Applicant received treatment from this individual's alcohol program from October 1998 to at least April 1999.

Applicant abstained from the use of alcohol for five months following his DWI arrest. While attending the alcohol treatment program in 1998/1999, applicant expressed an intention not to drink (Exhibit 11). Despite his stated intention, applicant admits that he currently consumes "approximately six beers on weekends and a fewer number during the week" (Exhibit 3). There is no evidence, however, that he has consumed alcohol to excess since his 1998 DWI. He claims the DWI "really woke (him) up," and he believes that he is now "a very responsible social drinker" (Exhibit 3).

Applicant used marijuana at least 20 times in 1996/1997. After abstaining from its use for several years, he used it one additional time. This last use occurred in early 2002, after he had completed a security clearance application (SCA), while he was on a snow boarding trip with friends. In a March 2002 statement, applicant stated: "Looking back it (his 2002 use of marijuana) was a mistake and I have no intention to start using any illicit drugs in the future" (Exhibit 6).

Applicant executed a SCA on February 20, 2002 (Exhibit 4). Applicant intentionally provided false material information to the Government in response to three questions on the SCA. In response to Question 24, which asked, "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" applicant responded "yes" and listed his DWI offense. He failed, however, to disclose the 1994, 1995, and 1996 alcohol-related charges.

In response to Question 27, which asked, "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example marijuana . . . ?" applicant responded "no." This response was false because, as noted above, he used marijuana at least 20 times during the 1996/1997 time frame.

In response to Question 30, which asked, "In the last 7 years, has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?" applicant stated "yes" and then disclosed his alcohol treatment in 1998/1999. He did not, however, disclose his earlier treatment in 1995.

Applicant denies that he intentionally provided false information. With respect to Questions 24 and 30, applicant stated the following: "I did not even consider these when I was filling out the form. I thought that because they were thrown out of court they were never charged or I was never convicted of anything. Looking back I guess that being cited and charged are one in the same. Therefore they should have been included in my original application. But I did not deliberately fail to disclose this information." This denial was not credible. With respect to Question 27, applicant stated that his marijuana use was "mistakenly omitted" because when he was filling out the form, he "honestly didn't think about it." This denial was not credible.

The Government failed to offer any credible evidence to support SOR Allegation 3d.

## **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 conditions are applicable:

### **Alcohol Consumption**

#### Disqualifying Conditions

1. Alcohol-related incidents away from work.

5. Habitual or binge consumption of alcohol to the point of impaired judgment.

#### Mitigating Conditions

2. The problem occurred a number of years ago and there is no indication of a recent problem.

3. Positive changes in behavior supportive of sobriety.

#### Drug Involvement

##### Disqualifying Conditions:

1. Any drug abuse.

##### Mitigating Conditions:

None.

#### Personal Conduct

##### Disqualifying Conditions

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire.

##### Mitigating Conditions

None.

#### CONCLUSIONS

With respect to Guideline G, the evidence establishes that applicant was cited for alcohol-related criminal conduct on four occasions between 1994 and August 1998. These incidents, together with applicant's admissions concerning his drinking habits while attending college, establish that he abused alcohol within the meaning of Guideline G from at least 1994 to August 1998.

Applicant stated that his DWI "really woke (him) up," and that although he still consumes alcohol, he does so in moderation. Given these credible statements, and the lack of any evidence of excessive alcohol consumption since August 1998 (over four years ago), I conclude that applicant has overcome the Government's case under Guideline G.

With respect to Guideline H, the evidence establishes that applicant used marijuana at least 20 times during the 1996/1997 time frame, and then, after abstaining from its use for several years, used it one additional time, in early 2002. Applicant's use of marijuana reflects adversely on his judgment, reliability and trustworthiness, and suggests that he cannot be relied upon to safeguard classified information.

Applicant's evidence of reform consists of his statements that his 2002 use of marijuana was a mistake, and he has "no intention to start using illicit drugs in the future." In view of his complete denial of any drug use on the SCA; his use of marijuana after several years of abstinence; and his use of marijuana after he completed his SCA, which clearly put him on notice that the Government is concerned about drug use, I do not find these uncorroborated statements of reform to be credible. Given this fact, and the recency of applicant's marijuana use, Guideline H is found against applicant.

With respect to Guideline E, the evidence establishes that applicant intentionally provided false, material information to the Government on an SCA he completed in February 2002 when he failed to disclose his 1994, 1995 and 1996 alcohol-related charges, his 1995 alcohol treatment, and his use of marijuana. 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 about his background, it is extremely difficult to conclude that he or she nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders. In this case, given the recency and extent of applicant's dishonesty, and his failure to offer any credible evidence from independent sources indicating that he has reformed and is now reliable and trustworthy, it is not now clearly consistent with the national interest to grant him access to classified information. For this reason, Guideline E is found against applicant.

### **FORMAL FINDINGS**

PARAGRAPH 1: FOR 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.

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Joseph Testan

Administrative Judge