

DATE: June 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23935

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's only criminal activity occurred over ten years ago. His numerous arrests since then do not establish criminal conduct because none resulted in charges being filed. He did not intentionally provide false information on a Security Clearance Application (SCA). Clearance is granted.

STATEMENT OF THE CASE

On December 29, 2004, 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, (as administratively reissued on April 20, 1999), 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 January 24, 2005. The case was assigned to me on March 23, 2005. A Notice of Hearing was issued on April 7, 2005, and the hearing was held on May 19, 2005. The transcript was received on June 2, 2005.

FINDINGS OF FACT

Applicant is a 29 year old employee of a defense contractor.

In May 1994, applicant was arrested for and charged with Driving Under the Influence of Alcohol (DUI). He was convicted of the charge, fined \$150.00, and his license was suspended for 90 days.

In March 1996, applicant was arrested for Prohibitions Intoxicating Liquor. In April 1996, he was arrested for (1) Promoting a Detrimental Drug III, and (2) Burglary I, a felony. In June 1996, he was arrested for DUI. In April 1999, he

was arrested for Criminal Property Damage IV. In November 2002, he was arrested for Assault II, a felony. None of these arrests resulted in charges.

In 2000, and again in 2002, applicant was charged with Criminal Contempt of Court for not dealing in a timely manner with traffic citations he received. On both occasions he took care of the traffic tickets and the charge was dismissed. Applicant has not received a traffic ticket in over a year.

The Government alleges that applicant intentionally provided false, material information in response to two questions on a Security Clearance Application (SCA) he executed on October 16, 2002 (Exhibit 1). In response to Question 21, applicant denied that he had ever been charged with or convicted of a felony. The Government alleges that his response was false because he was arrested and charged with a felony in April 1996 and in November 2002. I find that applicant's response was correct. With respect to the April 1996 arrest, although he was arrested, there is no credible evidence that he was ever charged with a crime as a result of this arrest. And, even if he was charged, at the time he completed the SCA, applicant sincerely believed that he had never been charged with a crime. He therefore had no intent to deceive. With respect to his November 2002 arrest, this occurred *after* he executed the SCA.

With respect to Question 24, which asked if he had ever been charged with or convicted of an offense related to alcohol or drugs, applicant disclosed his 1994 DUI arrest and conviction. ⁽¹⁾ The Government alleges applicant lied because he did not disclose the March 1996 alcohol-related incident, the April 1996 drug-related incident, and the June 1996 alcohol-related incident. I find that applicant did not intentionally conceal these three incidents. I reach this conclusion for at least two reasons. First, there is no credible evidence that he was ever charged as a result of these incidents. Second, even if he was charged, at the time he completed the SCA, he did not believe he had been charged. Accordingly, there was no intent to deceive on his part.

Letters from four individuals well acquainted with applicant were admitted into evidence. These letters establish that applicant performs well at his job.

CONCLUSIONS

With respect to Guideline J, the evidence establishes that applicant was arrested for and convicted of DUI in 1994, over ten years ago. 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*).

Except for some traffic violations, applicant has not engaged in criminal conduct in over ten years. His numerous arrests, none of which resulted in formal charges, standing alone, do not establish criminal conduct on the part of applicant. He qualifies for Mitigating Conditions E2.A10.1.3.1 (*the criminal behavior was not recent*), E2.A10.1.3.2 (*the crime was an isolated incident*), 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*). Based on the foregoing, Guideline J is found for applicant.

With respect to Guideline E, as discussed in the Findings of Fact, I conclude that applicant did not intentionally provide false, material information to the Government. Accordingly, Guideline E is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

PARAGRAPH 2: 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

1. Although he had the date wrong, he clearly intended to disclose this one and only DUI conviction.