

DATE: June 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00280

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Lynette Andresen, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's intentional falsification of material facts on a Security Clearance Application (SCA) requires a denial of his clearance request. Clearance is denied.

STATEMENT OF THE CASE

On January 28, 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, 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 February 9, 2004, 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 April 23, 2004. Applicant did not file a response to the FORM. The case was assigned to me on June 3, 2004.

FINDINGS OF FACT

Applicant is a 27 year old employee of a defense contractor.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately January 1997 to at least July 29, 2002.

In approximately June 1997, while serving in the U.S. Navy, applicant was charged with violating three Articles of the Uniform Code of Military Justice (UCMJ); namely (1) Article 117 - Wrongful Use of Provoking Words, (2) Article 128 - Assault, and (3) Article 134 - Drunk and Disorderly Conduct. He was found guilty and sentenced to 30 days restriction and extra duty, ordered to forfeit \$400.00 in pay for two months, and was reduced in rank (suspended for six months).

In approximately December 1997, while still serving in the U.S. Navy, applicant was charged with violating Article 134 of the UCMJ. He was found guilty and was sentenced to 60 days restriction, reduced in rank, and ordered to forfeit \$450.00 in pay for two months.

In 1999, applicant was arrested and charged with Driving Under the Influence (DUI) and two lesser charges. All three charges were dismissed. Applicant admits he had been drinking immediately prior to his arrest.

In August 2000, applicant was arrested and charged with DUI. He was found guilty of Reckless Driving and was fined \$1,000.00.

In 1997 or 1998, applicant received alcohol counseling from the U.S. Navy.

In 1995, applicant was arrested and charged with (1) Misdemeanor Possession of Drug Paraphernalia and (2) Misdemeanor Possession of Cannabis. He pleaded guilty to the first charge and the second charge was dismissed. He was fined \$250.00. In a signed, sworn statement that he gave to the Defense Security Service (DSS) in July 2002 (Exhibit 5), applicant stated that these charges were filed after the police found a marijuana pipe in his friend's car. He further stated that the pipe was not his, and that he has never used marijuana or any other illegal drug.

In 2001, applicant was arrested in State A on a warrant for a drug-related offense issued by State B. After spending a day in jail, applicant was released with no charges being filed. Applicant believes his arrest was the result of mistaken identity.

Applicant intentionally provided false, material information to the Government in response to three questions on a Security Clearance Application (SCA) he executed on May 8, 2002 (Exhibit 4). 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 stated "no." This response was false because, as noted above, applicant had been charged with a drug-related offense in 1995, a DUI in June 1999, and a DUI in 2000. In Exhibit 5, applicant stated that he "knowingly and willfully" omitted his alcohol-related arrests and criminal charges from the SCA because he did not remember the dates of the offenses.

In response to Question 25, which asked, "In the last 7 years have you been subject to court martial or other disciplinary proceedings under the UCMJ?" applicant stated "yes," but then disclosed just one of the two incidents for which he received punishment under the UCMJ.

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 "no." This response was false because, as noted above, applicant had received alcohol counseling in 1997 or 1998.

In response to the SOR, applicant stated the following about his falsification of material facts on the SCA:

When I was hired on with my company it was with the understanding that I would be going to [a different state] to do an install for them. I had to finish all of my paperwork before I left and had very little time to prepare for 3 months away from my home and fill out the extensive amount of paperwork I needed to complete. Being that I knew many people that had gone through the process of getting a security clearance I knew that an interview with an investigator would soon come my way. So short on time and unsure of specific dates that the incidences had taken place I finished the paperwork not disclosing my complete history (A decision that I now realize was foolish and I regret immensely). I knew I would have the chance to declare all of that information once my interview came, when that time came I explained to my interviewer what I had just explained to you and did disclose all of the information of my past without even having to be asked. My intentions were not to mislead or be untruthful to anyone. I cannot express how sorry I am for my actions.

CONCLUSIONS

With respect to Guideline G, the evidence establishes that applicant (1) has consumed alcohol, at times to excess and to

the point of intoxication, from approximately January 1997 to at least July 29, 2002, (2) has been arrested and/or charged with alcohol-related offenses on four separate occasions, (3) has been convicted of alcohol-related offenses on at least two occasions, and (4) continues to consume alcohol. This conduct reflects adversely on his judgment and reliability. It also requires application of Disqualifying Condition E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*).

Once the Government established a *prima facie* case under Guideline G, the burden shifted to applicant to produce evidence in refutation, extenuation, mitigation or reformation sufficient to establish that, notwithstanding the Government's *prima facie* case, he can be relied upon to safeguard classified information. Applicant failed to meet his burden. He offered no credible evidence from which I can conclude he is unlikely to consume alcohol to excess in the future. ⁽¹⁾ For this reason, Guideline G is found against applicant.

With respect to Guideline E, applicant's falsification of material facts on the SCA 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. 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 . . .*). Applicant's explanation for providing the false information, even if true, neither excuses nor mitigates his dishonest and criminal conduct. ⁽²⁾ No Mitigating Conditions apply. ⁽³⁾ Based on the foregoing, Guideline E is found against applicant.

With respect to Guideline J, the evidence establishes that applicant (1) was convicted of a drug-related charge in 1995, (2) received punishment under the UCMJ on two occasions after being convicted of alcohol-related misconduct in 1997, (3) was convicted of Reckless Driving following his arrest for DUI in 2000, and (4) intentionally provided false, material information in response to three questions on the SCA he executed in May 2002. 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

All subparagraphs found for the applicant

PARAGRAPH 2: AGAINST THE APPLICANT

All subparagraphs found against applicant

PARAGRAPH 3: AGAINST THE APPLICANT

All subparagraphs found against 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. In the statement he provided as part of his response to the SOR, applicant doesn't address his current alcohol consumption or his intentions regarding future alcohol consumption.
2. Applicant's intentional falsifications of material facts on the SCA constitute felonies under 18 U.S.C. 1001.
3. Mitigating Condition E2.A5.1.3.2 doesn't apply because the falsification was recent. Mitigating Condition E2.A5.1.3.3 doesn't apply because applicant did not make a prompt, good-faith effort to correct his falsifications before being confronted with the facts.