

DATE: July 7, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04076

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's long-standing indebtedness and his intentional falsification of material facts on a Security Clearance Application (SCA) preclude a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On October 7, 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 October 28, 2003 and January 13, 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 March 16, 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 33 years of age. He is employed as an electrician by a defense contractor.

Applicant admits all of the factual allegations under Guideline F. Accordingly, SOR Paragraphs 1a through 1n are incorporated by reference as Findings of Fact. In his response to the SOR, applicant stated that he considered filing bankruptcy, but after discussing the matter with an attorney, he decided it would be better if he tried to pay off the debts. Applicant claims his "poor money management contributed much to [his] financial difficulties," which were greatly compounded after he lost his job following his 2001 Driving Under the Influence (DUI) arrest and conviction.

Applicant admits all of the factual allegations under Guideline J. Accordingly, SOR Paragraphs 2a through 2d are incorporated by reference as Findings of Fact.

Applicant admits all of the factual allegations under Guideline H. Accordingly, SOR Paragraphs 3a, 3b and 3c are incorporated by reference as Findings of Fact. Applicant has not used any illegal drug since sometime in 1995, and does not intend to use any in the future.

Applicant admits both factual allegations under Guideline G. Accordingly, SOR Paragraphs 4a and 4b are incorporated by reference as Findings of Fact. In his response to the SOR, applicant stated that his April 2001 DUI arrest was a "blessing in disguise" because it allowed him to get the help he needed to beat an addiction he would have never admitted having. He further stated that he has been clean and sober since the DUI.

With respect to Guideline E, applicant intentionally provided false, material information to the Government in response to three questions (1) on an SCA he executed on July 23, 2002 (Exhibit 6). (2) Specifically, in response to Question 24, he failed to disclose that he was arrested and charged with Possession of marijuana (POM) in 1993; in response to Question 26, he failed to disclose that in June 2002, he had been arrested and charged with Assault and Battery of a Family Member; and in response to Question 37, he disclosed just one unpaid judgment, when in fact, at the time he executed the SCA, there were at least three other unpaid judgments against him. In a signed, sworn statement that he gave to the Defense Security Service (DSS) in September 2002 (Exhibit 7), applicant stated that he did not list his 1993 POM arrest on the SCA because he "did not consider it to be serious." He offered no explanation for his false responses to questions 26 and 37.

CONCLUSIONS

The evidence establishes that at the present time, applicant has at least 14 past-due debts totaling approximately \$16,000.00, including one that was charged off, nine that have been placed for collection, and three that have resulted in civil judgment against him. The evidence further establishes that as of September 2002, applicant's monthly income exceeded his monthly expenses by a mere \$100.00, far short of what he needs to begin making any meaningful progress toward reducing his delinquent debt. These facts require application of Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*).

In view of applicant's history of financial difficulties, and the lack of any evidence that would suggest his financial condition is likely to significantly improve anytime soon, it is not now clearly consistent with the national interest to grant him access to classified information. No mitigating conditions are applicable. Based on the foregoing, Guideline F is found against applicant.

With respect to Guideline G, the evidence establishes that applicant (1) consumed alcohol, at times to excess and to the point of intoxication, from approximately 1988 to at April 2001, and (2) was arrested for and convicted of DUI in April 2001. 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*).

In his response to the SOR, applicant described his DUI arrest as a "blessing in disguise" because it gave him the insight into his alcohol problem and allowed him to get the help he needed. Based on this statement, and the lack of any evidence that applicant has consumed alcohol to excess since his April 2001 DUI arrest, applicant qualifies for Mitigating Conditions E2.A7.1.3.1 (*the alcohol-related incidents do not indicate a pattern*), E2.A7.1.3.2 (*the problem occurred a number of years ago and there is no indication of a recent problem*), and E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*). Based on applicant's clear evidence of reform, Guideline G is found for him.

With respect to Guideline H, the evidence establishes that applicant (1) used marijuana with varying frequency from about 1982 to about 1995, (2) used cocaine once in 1988, and (3) was arrested for and convicted of POM in 1993. This conduct reflects adversely on his judgment and reliability, and requires application of Disqualifying Conditions E2.A.8.1.2.1 (*any drug abuse*) and E2.A8.1.2.2 (*illegal drug possession*).

Applicant presented credible evidence that he has not used an illegal drug since 1995, and that he does not intend to use illegal drugs in the future. These facts qualify him for Mitigating Conditions E2.A8.1.3.1 (*the drug involvement was not recent*), and E2.A8.1.3.3 (*a demonstrated intent not to abuse drugs in the future*). Given these facts, and applicant's clear evidence of reform, Guideline H is found for him.

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 . . .*). 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 was (1) convicted of a drug-related charge in 1993, (2) convicted of DUI in 2001, and (3) convicted of Assault and Battery on a Family Member in 2002. The evidence further establishes that applicant intentionally provided false, material information in response to three questions on the SCA he executed in July 2002.⁽⁴⁾ 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: FOR THE APPLICANT

All subparagraphs found for applicant

PARAGRAPH 4: FOR THE APPLICANT

Both subparagraphs found for applicant.

PARAGRAPH 5: AGAINST THE APPLICANT

Subparagraphs 5a, 5b and 5d found against applicant

Subparagraph 5c found for 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. SOR Paragraph 5c is found for applicant because it is unclear if applicant's drug use occurred during the seven years immediately preceding July 23, 2002.
2. The SOR incorrectly states the SCA was executed on July 24, 2002.
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 there is no credible evidence that applicant made a good-faith effort to correct his falsifications before being confronted with the facts.
4. Applicant's intentional falsifications of material facts on the SCA constitute felonies under 18 U.S.C. 1001.