

DATE: October 15, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-06016

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Most of applicant's criminal conduct was minor and occurred a long time ago. However, a 1985 Driving Under the Influence (DUI) conviction, a 1997 alcohol-related arrest and conviction, and applicant's 2002 intentional falsification of material facts on a Personnel Security Questionnaire (PSQ), which constitutes a felony under 18 U.S.C. 1001, establishes a continuing pattern of criminal conduct that is too serious and recent to be mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On April 1, 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 April 13, 2004. The case was assigned to the undersigned on June 17, 2004. Notices of Hearing were issued on July 8 and August 24, 2004, and the hearing was held on September 8, 2004. The transcript was received on September 22, 2004.

**FINDINGS OF FACT**

Applicant is a 57 year old employee of a defense contractor.

Applicant completed a PSQ on May 28, 2002 (Exhibit 2). 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 applicant had been charged with alcohol-related offenses in 1985 and July 1997. In a signed, sworn statement that he gave to the Defense Security Service (DSS) in January 2003 (Exhibit 4), applicant stated, "I did not list

this [July 1997] arrest on my security questionnaire because I was embarrassed." At the hearing applicant testified, in essence, that although he was working out of town at the time he completed the PSQ, and therefore did not have access to his records concerning these arrests, he still knew he should have responded "yes" to Question 24. He further testified that answering "no" was a "stupid thing to do" (TR at 24-25).

In his response to the SOR, applicant admitted all of the factual allegations under Guideline J. Accordingly, SOR Paragraphs 2a through 2e are incorporated by reference as Findings of Fact.

### CONCLUSIONS

With respect to Guideline E, applicant's falsification of material facts on the PSQ 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 falsification of material facts requires 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 to applicant's dishonest conduct.<sup>(1)</sup> Based on the foregoing, Guideline E is found against applicant.

With respect to Guideline J, the evidence establishes that applicant was arrested on four or five occasions in the 1960s and in 1971. There is no evidence that he was ever convicted of anything following these 30 and 40 year old arrests. These incidents are mitigated by the lack of convictions and the passage of time. In short, they have absolutely no current security significance.

Applicant's 1985 DUI conviction and July 1997 plea of nolo contendere to Reckless Driving raise security concerns. Nevertheless, had they been the last criminal activity on the part of applicant, they too would be mitigated by the passage of time. However, because applicant's intentional falsification of material facts on the PSQ he executed in May 2002 constitutes a felony under 18 U.S.C. 1001, I must conclude that applicant's conduct constitutes a continuing pattern of criminal activity that is too serious and recent to be mitigated. Disqualifying Condition E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*) is applicable to this case. No Mitigating Factors are applicable.

### FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: 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

1. 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 prompt, good-faith effort to correct his falsifications before being confronted with the facts.