

DATE: April 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08704

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's drug involvement is mitigated because his two-time use in February 2002 was isolated and occurred after more than 19 years of being drug free. Conversely, Applicant has not presented sufficient evidence to find in his favor under the personal conduct and criminal conduct guidelines or the whole person concept. Applicant's pattern of deliberate falsifications demonstrates poor judgment and unreliability that has not been mitigated. Clearance is denied.

STATEMENT OF CASE

On April 26, 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, amended April 4, 1999, issued a Statement of Reasons (SO) to Applicant. The SO 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 furnished his answer to the SO on May 24, 2004. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on August 12, 2004. Applicant received the FORM on August 19, 2004. His response to the FORM was due by September 20, 2004. No response was received. The case was assigned to me on October 7, 2004.

FINDINGS OF FACT

The SO alleges drug involvement (Guideline H), personal conduct (Guideline E), and criminal conduct (Guideline J). Applicant admitted all factual allegations except for 1.e. Applicant did not provide a response to paragraph 3 (criminal conduct). I shall assume he denies paragraph 3. Applicant is 43 years old and employed as a painter by a defense contractor. He seeks a secret clearance.

Applicant used three drugs from age 20 to age 23 (1981 to 1983). He smoked marijuana about 10 times during the period; his method of ingestion was by cigarette. Peer pressure motivated him to use marijuana although he did not like the drug. Peer pressure also caused Applicant to use cocaine. While he stated he did not like cocaine, he inhaled the drug by straw about 50 times during the same three year period. He also ingested crystal methamphetamine by straw between 100 and 200 times from 1981 to 1983. He surmised he purchased methamphetamine about 20 times.

Applicant maintains he used no drugs between 1983 and January 2002 because he wanted to set an the right example for his two children. However on January 2, 2002, he and his wife were involved in a serious argument over money related to their Chapter 13 wage earner's plan. The argument apparently irritated Applicant. He left the house and went to a party where he drank beer. He also used crystal methamphetamine twice.

At work the following Monday, Applicant was given a drug test that he failed. He tested positive for amphetamines (Item 8) and was fired on February 11, 2002, for illegal drug use.

Applicant submitted an employment application to his current employer on February 14, 2002 (Item 9) in which he stated he left his previous employer because of insufficient work hours.

About the time he was hired by his current employer, he filled out a security clearance questionnaire (SEA, Item 6) on February 27, 2002. In response to question 20 requiring reasons for leaving a job in the last 7 years, Applicant deliberately provided false information that he had been fired because of a disagreement over work performance when he knew he was fired from his previous employment for illegal drug use. In response to question 27 (requiring information about drug use in the last 7 years, Applicant deliberately provided false information with his "no" answer.

On July 25, 2002, Applicant also provided false information when he informed the Special Agent during an interview with the Defense Security Service (DSS) that he was terminated from his previous job because of an argument with his supervisor.

Applicant made a conscious decision not to use drugs between 1983 and 2002 so that his children could grow up in a drug free environment. Applicant has been deeply involved in the local little league for about 17 years. Applicant takes his youngest son to football practice after work.

POLICIES

As set forth in the Directive, every personnel security determination must be a fair and impartial, overall, commonsense decision based upon all available information, the guidelines and the whole person concept.

Burden of Proof

The government has the burden of proving controverted facts by substantial evidence. After the government meets its burden, an applicant has the ultimate burden of presenting evidence in refutation, extenuation, or mitigation that demonstrates it is clearly consistent with the national interest to grant or continue his security clearance. Any doubt concerning an applicant's security clearance access should be resolved in favor of national security. *Department of the Navy v. Egan*, 484 U.S.518, at 531.

Drug Involvement

Drug involvement may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Personal Conduct

Conduct involving poor judgment and/or dishonesty may indicate the person may not properly safeguard classified information.

Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

CONCLUSIONS

Drug Involvement. Improper use of drugs establishes security concern regarding an individual's willingness or ability to protect classified information. If an individual is willing to defy the drug laws by using illegal drugs, then what is there to stop him from adopting the same attitude toward security rules he disagrees with. Using the minimum estimates Applicant provided in describing his drug use in his sworn statement, he ingested marijuana, cocaine, and methamphetamine approximately 160 times between 1981 and 1983. He also purchased cocaine and methamphetamine on an occasional basis. That volume of purchase and usage would disqualify him from a security clearance under disqualifying conditions (DC) E2.A8.1.2.1. (*any drug abuse.*); E2. A8.1.2.2. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.*) However, between 1983 and January 2002, Applicant used no drugs. On approximately January 2, 2002, after arguing with his wife over money issues, Applicant inhaled methamphetamine on two occasions during a party. He fully recognizes the two-time drug use was a mistake and shatters the positive example he had provided for his children in the previous 19 years by not using any drugs. Given the credible explanations Applicant has furnished about trying to raise his children in a drug-free environment, I shall mitigate the aberrational use in February 2002 and conclude in accordance with mitigating condition (MC) E2.A8.3.1. (*the drug involvement was not recent*) that his drug involvement is mitigated by a 19 year-period of abstinence. Applicant's concern over his children's environment and involvement in their activities leads me to believe he will not use drugs in the future. (MC E2A.8.1.3.3., *a demonstrated intent not to abuse or use drugs in the future.*)

Person conduct. Furnishing correct information about one's past during the security investigation is the primary issue under the personal conduct guideline. Deliberately providing false information on a repeated basis may disqualify a person from holding a security clearance. On three separate occasions over the course of five months in 2002, Applicant provided false information about his previous employment and his illegal drug use. In his employer's current application dated February 14, 2002, Applicant deliberately lied when he indicated he left his previous employer because of insufficient work and hours instead of being fired for illegal drug use. In his SEA dated February 27, 2002, Applicant stated he was terminated because of a disagreement over work performance when he knew he had been fired for illegal drug use. In the same SEA, he denied he had used drugs. On July 25, 2002, he deliberately lied about the reason why he left his previous employment. Applicant's pattern of deliberate falsifications constitutes prohibitive conduct under DC E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant and material matters from any personnel security questionnaire used to determine security clearance eligibility.*) and DC E2.A5.1.2.3. (*deliberately providing false or misleading information concerning relevant and material matters to an investigator in connection with a personnel security or trustworthiness determination.*)

The mitigating conditions have been examined but are inapplicable to these circumstances. MC E2.A5.1.3.1 (*the information was unsubstantiated for not pertinent to a determination of judgment, trustworthiness, or reliability*) is not available to mitigate as a person's drug history is always pertinent to judgment and reliability. MC E2.A5.1.3.2. (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided information voluntarily*) is not applicable because the falsifications were not isolated. MC E2.A5.1.3.3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) must also be removed from consideration because Applicant did not divulge his drug history until he was confronted with the positive test result by the Special Agent. Having tried to conceal his drug history on three previous occasions, Applicant knew his drug use and job termination were legitimate concerns of the government. The failure to disclose his drug use and the real reason for his job termination until he was confronted with the positive test result, suggests Applicant cannot be relied on to tell the truth where his own personal interests are involved. Given the three deliberate falsifications, I find against Applicant under the personal conduct guideline.

Criminal Conduct. The pattern of personal conduct also establishes a pattern of felonious criminal conduct cognizable under Title 18 USC 1001 even though Applicant was never formally charged with a crime. (DC E2.A10.1.2.1., *allegations or admission of criminal conduct, regardless of whether the person was formally charged*) Applicant intentionally falsified or omitted material information that the government is entitled to know about in order to make an informed decision about Applicant's security worthiness. The mitigating conditions have been reviewed however, none apply. Since the falsifications occurred less than five years ago, MC E2A10.1.3.1. (*the criminal behavior was not*

recent) is not applicable. In addition, the falsifications were not isolated within the meaning of C E2A101.3.2. (*the crime was an isolated incident.*) Finally, Applicant has not presented sufficient evidence under MC E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation.*) Though the drug involvement guideline is found in Applicant's favor, his scant evidence in rehabilitation and mitigation falls far short of successfully overcoming the pattern of dishonesty he demonstrated under the personal conduct and criminal conduct guidelines.

FORMAL FINDINGS

Paragraph 1 (drug involvement, Guideline H): AGAINST THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.

Paragraph 2 (personal conduct, Guideline E): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.

Paragraph 3 (criminal conduct, Guideline J): AGAINST THE APPLICANT.

- a. 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 Applicant a security clearance.

Paul J. Mason

Administrative Judge