

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant's falsifications of material facts during an interview with DoD investigators, on a Security Clearance Application (SCA), and on two other security questionnaires, requires a denial of her security clearance request. Clearance is denied.

CASENO: 03-16160.h1

DATE: 02/15/2005

DATE: February 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16160

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Eduardo Leaton, Jr.

SYNOPSIS

Applicant's falsifications of material facts during an interview with DoD investigators, on a Security Clearance Application (SCA), and on two other security questionnaires, requires a denial of her security clearance request. Clearance is denied.

STATEMENT OF THE CASE

On June 4, 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 June 17, 2004. The case was assigned to the undersigned on August 12, 2004. A Notice of Hearing was issued on January 5, 2005, and the hearing was held on February 3, 2005. The transcript was received on February 15, 2005.

FINDINGS OF FACT

Applicant is a 28 year old engineer. She has worked for the same defense contractor since May 2000.

Applicant used marijuana from 1992 to at approximately August 1994. Most of her use occurred when she was in High School; however, she used it a "handful of times" while in college in 1994 (TR at 45-46). She used nitrous oxide once in the summer of 1992. [\(1\)](#)

In 1996, applicant was interviewed for a job with a Government agency. During the interview she stated that she had used marijuana eighty times. Applicant has since explained that she was young at the time, inexperienced, and in essence exaggerated the number of times she used it in order to finish with the interview.

In March 1997, applicant intentionally falsified information about her use of illegal drugs on two separate security forms used by the Government to assess her security-worthiness. On one form (Exhibit 3), she lied when she denied that she had *ever* experimented with illegal drugs, including marijuana. On the second form (Exhibit 4), she lied when she denied using any illegal drug during the previous five years. As noted above, she had used marijuana and nitrous oxide during the previous five years.

In June 2000, applicant executed an SCA. In response to Question 27, which asked if she had used marijuana since the age of 16 or in the last 7 years, whichever is shorter, applicant stated "no." Applicant admits that her response was false, but testified that she did not intentionally provide the false information. She testified that she had "completely forgot" about her marijuana use while in college (TR at 46-47). Applicant's denial is not credible for at least three reasons. First, applicant admitted in a signed, sworn statement that she gave to the Defense Security Service (DSS) in April 2002 (Exhibit 2, page 7) that she "knew [she] was being dishonest when [she] deliberately answered no pertaining to drug use on [her] security questionnaire." Second, although most of her marijuana use may have occurred while she was in High School, she used it enough times in college that it is highly unlikely she would not have remembered it when completing the SCA. Third, applicant has a history of dishonesty on the issue of her drug use when dealing with the Government.

During her interview with the DSS on April 9, 2002, applicant initially intentionally provided false, material information about her drug use. Specifically, when first questioned, applicant significantly downplayed the number of times she used marijuana, and she denied any other illegal drug use.

Letters from various people who know applicant well, including friends, coworkers, and her program manager, were admitted into evidence (Exhibits A, C, D, E, F, and G). These letters establish that applicant is considered by these individuals to be a very trustworthy person who performs well at her job.

CONCLUSIONS

The evidence establishes that applicant provided false, material information about her involvement with marijuana and/or nitrous oxide to the Government on the following documents and during the following interview:

1. Security Screening Questionnaire dated March 5, 1997;

2. Security Screening Questionnaire dated March 6, 1997;

3. June 12, 2000 SCA;

4. April 9, 2002 interview with the DSS.

These 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, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), Disqualifying Condition E2.A5.1.2.3 (*deliberately proving false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security or trustworthiness determination*), and Disqualifying Condition 5 (*a pattern of dishonesty or rule violations*).

I have considered the very favorable character letters applicant offered into evidence. I cannot give much weight to these letters, however, because there is no evidence that the authors were aware of applicant's multiple falsifications of material facts when they wrote their letters.

The recency and extent of applicant's intentional falsifications preclude a finding that she can now be relied upon to be truthful with the Government. No mitigating Conditions are applicable. Based on the foregoing, the Personal Conduct Guideline is found against applicant.

With respect to the Criminal Conduct guideline, applicant's intentional falsifications of material facts, which constitute felonies under 18 U.S.C. 1001, require application of Disqualifying Condition 1 (*any criminal conduct, regardless of whether the person was formally charged*) and Disqualifying Condition 2 (*a single serious crime or multiple lesser offenses*). The recency and seriousness of applicant's felonious conduct precludes application of any mitigating factors under Guideline J, and requires a denial of her security clearance request.

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.

Joseph Testan

Administrative Judge

1. Although there is conflicting evidence concerning when she used nitrous oxide, I found her testimony that she used it in the summer of 1992 to be credible and worthy of belief (TR at 47-48).