

KEYWORD: Personal Conduct; Drugs

DIGEST: Applicant's intentional falsifications of material facts on 1997 and 1999 Security Clearance Applications (SCA), which constitute felonies under 18 U.S.C. 1001, together with his incredible testimony at the DOHA hearing, establish a continuing pattern of dishonesty that is too recent and too serious to be mitigated. Clearance is denied.

CASENO: 03-17410.h1

DATE: 01/24/2005

DATE: January 24, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-17410

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's intentional falsifications of material facts on 1997 and 1999 Security Clearance Applications (SCA), which constitute felonies under 18 U.S.C. 1001, together with his incredible testimony at the DOHA hearing, establish a continuing pattern of dishonesty that is too recent and too serious to be mitigated. Clearance is denied.

STATEMENT OF THE CASE

On June 10, 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 July 1, 2004. The case was assigned to the undersigned on August 9, 2004. A Notice of Hearing was issued on October 6, 2004, and the hearing was held on November 16, 2004. The transcript was received on December 1, 2004.

FINDINGS OF FACT

Applicant is a 45 year old employee of a defense contractor. He has held a DoD clearance since 1985.

Applicant first started smoking marijuana while in high school. He continued to smoke it with varying frequency, at times as much as once every two months, until May/June 2003. Applicant testified that the longest period of time he went without smoking marijuana since high school would have been "three, four or five years" (TR at 46).

In April 1997, applicant intentionally provided false information on a Security Clearance Application (SCA) that he knew was going to be used to assess his security-worthiness. Specifically, in response to Question 28, which asked, "Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety?" applicant stated "no."

In April 1999, applicant intentionally provided false material information on another SCA that he knew was going to be used to assess his security-worthiness. Specifically, in response to Question 28, which was identical to the Question 28 referenced in the immediately preceding paragraph, he again stated "no."

Applicant testified, in essence, that his "no" responses to these two questions were correct because the way he interprets Question 28, a "yes" response was required only if he was a law enforcement officer, prosecutor, or courtroom official who possessed a security clearance. He added that when he admitted the two allegations of falsification in his response to the SOR, he mistakenly

thought the SOR was referring to Question 27⁽¹⁾ on the two SCAs in question, not Question 28. Applicant's testimony concerning the falsifications was absolutely incredible. His interpretation of Question 28 is absurd, particularly for a man of his intelligence, and appears to have been arrived at long after he completed the two SCAs.

In March 2001, applicant was confronted by a member of his employer's security department and asked about allegations that he smoked marijuana outside of the work place. At first applicant denied any involvement with marijuana. When the investigator asked applicant what the results would be if he were to take a urine test, applicant admitted smoking marijuana at a party a week earlier. Applicant then admitted to the investigator that he smoked marijuana on rare occasions at parties or concerts. He then told the investigator that he did not want to jeopardize his job or security clearance and would immediately cease any further use of marijuana. According to applicant, when he made

this last statement he meant it (Exhibit 6; TR at 56).

Despite his March 2001 statements that he didn't want to jeopardize his job or clearance, and that he would immediately cease using marijuana, applicant continued to use marijuana until at least May, and possibly June, 2003 (Exhibit 4). When asked by Department Counsel why he used marijuana after telling his company's security officer that he would cease this activity immediately, applicant responded, "Stupid. Human Nature. I am only human" (TR at 57).

Documentary evidence offered by applicant establishes that he performs well at his job (Exhibits A and B).

CONCLUSIONS

With respect to Guideline E, applicant's falsifications of material facts on the SCAs are 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 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.⁽²⁾ Based on the foregoing, Guideline E is found against applicant.

With respect to Guideline H, the evidence establishes that applicant used marijuana to at least May/June 2003. Because there is no evidence that he has used it since then, I cannot conclude that he is currently an unlawful user of marijuana. Accordingly, 10 U.S.C. 986 is not applicable to automatically bar applicant's clearance request. However, based on applicant's long term use of marijuana, his inability or unwillingness to be truthful about it, and his use of it after he promised his security officer he would abstain from any further use (which leads to the conclusion that he is either unable or unwilling to stop this illegal drug use), I cannot conclude that applicant has reformed and is unlikely to use marijuana in the future. Disqualifying Condition E2.A8.1.2.1 (*any drug abuse*) applies. No Mitigating Conditions are applicable. Based on the foregoing, Guideline H is found against applicant.

FORMAL FINDINGS

GUIDELINE H: AGAINST THE APPLICANT

GUIDELINE E: 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. Question 27, which was identical on both SCAs, asked, "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example marijuana . . ." Applicant responded "no" to this question on both SCAs. These responses were clearly false. Quite incredibly, applicant testified that he responded "no" to these questions because he didn't see himself as "an illegal user of marijuana," and that "it just seemed to [him] that that little bit of indiscriminate use or not even use, just partaking, was not something that warranted a yes . . ." (TR at 49-50).
2. 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.