

KEYWORD: Personal Conduct; Criminal Conduct; Drugs

DIGEST: Applicant's (1) intentional falsifications of material facts on two security questionnaires and in a signed, sworn statement he gave to the Defense Investigative Service (DIS), and (2) intention to continue using marijuana, preclude a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

CASENO: 04-00226.h1

DATE: 08/08/2005

DATE: August 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00226

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's (1) intentional falsifications of material facts on two security questionnaires and in a signed, sworn statement he gave to the Defense Investigative Service (DIS), and (2) intention to continue using marijuana, 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 February 18, 2005, 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 March 17, 2005, 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 June 6, 2005. Applicant did not file a response to the FORM. The case was assigned to me on August 3, 2005.

FINDINGS OF FACT

Applicant is a 46 year old employee of a defense contractor. He was granted a DoD security clearance in 1988.

Applicant used marijuana daily from 1972 to January 2003. He also purchased it. After abstaining from its use from February through August 2003, he resumed using it. Since September 2003 the frequency of his use has been less than daily. In his words, "I do not smoke every day, and I only smoke after I get off work to relax and unwind."⁽¹⁾ He intends to continue using it.

In December 2002, applicant was arrested for and charged with Driving Under the Influence (DUI) and Possession of Less than an Ounce of Marijuana (POM).

Applicant intentionally provided false, material information to the Government in response to a question dealing with illegal drug use on a Personnel Security Questionnaire (PSQ) he executed in 1987 (Exhibit 10). In response to Question 18a, which asked if he had ever used an illegal drug, including marijuana, applicant stated "yes," and then explained that he had used marijuana "recreationally 3 or 4 times at parties when [he] was in college." This was a false statement because applicant had used marijuana after he left college (1979), and he used it daily. Applicant intentionally repeated the same false information on a 1994 National Agency Questionnaire (NAQ) (Exhibit 11). And, in a signed, sworn statement he gave to an agent of the Defense Investigative Service (DIS) in October 2003 (Exhibit 5), he intentionally omitted material information when, while describing the December 2002 incident referenced above, he failed to disclose he was arrested for POM.

CONCLUSIONS

With respect to Guideline H, the evidence establishes that applicant (1) was a daily user of marijuana for many years, (2) used it while holding a DoD security clearance, (3) was arrested for POM in December 2002, and (4) intends to continue using it. 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*). More importantly, pursuant to 10 U.S.C. 986, applicant's stated intention to continue using marijuana precludes him from holding a DoD security clearance.

With respect to Guideline E, applicant's intentional falsifications of material facts on three occasions 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, or in a signed, sworn statement, 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 . . .*) and Disqualifying Condition E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to an investigator . . .*). No Mitigating Conditions apply. Based on the foregoing, Guideline E is found against applicant.

With respect to Guideline J, the evidence establishes that applicant was arrested for POM in 2002. The evidence further establishes that applicant intentionally provided false, material information to the Government on a 1987 PSQ, a 1994 NAQ, and in a signed, sworn statement in 2003.⁽²⁾ 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

PARAGRAPH 2: AGAINST THE APPLICANT

PARAGRAPH 3: 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. SOR Response.
2. Applicant's intentional falsifications of material facts constitute felonies under 18 U.S.C. 1001.