

DATE: May 18, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01338

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's complete disregard for the law strongly suggests he cannot be relied upon to follow the rules and regulations relating to the protection of classified information. Clearance is denied.

STATEMENT OF THE CASE

On November 23, 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 on January 11, 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 March 21, 2005. Applicant did not file a response to the FORM. The case was assigned to me on September 22, 2005.

FINDINGS OF FACT

Applicant is a 25 year old employee of a defense contractor.

In February 2002, applicant was arrested and charged with Driving Under the Influence (DUI). He pleaded guilty to the charge, and was sentenced to 3 days in jail, fined \$300.00, ordered to attend a DUI school, and placed on probation for one year. In addition, his drivers license was suspended for one year.

Applicant was not arrested for DUI in March 2002 as alleged in the SOR.

Applicant was not arrested for DUI on October 31, 2002 as alleged in the SOR. On this date, however, he was cited for

Driving While License Suspended or Revoked. He pleaded no contest to the charge, and was fined \$300.00, placed on probation for three months, and ordered to attend a driver improvement course.

In February 2003, applicant was cited for DUI and for violating the terms of his restricted drivers license. In May 2003, he was found guilty of the charges. He was sentenced to 90 days in jail, fined \$918.00, his drivers licence was revoked for five years, and he was ordered to attend DUI school.

On May 5, 2004, applicant responded to interrogatories sent to him by DOHA. In his responses, applicant stated, among other things, that he last consumed alcohol, and was last intoxicated, in February 2003, and that he does not intend to consume alcohol in the future. In a signed, sworn statement he gave to the Defense Security Service (DSS) in December 2003 (Exhibit 5), he stated that he intends to abstain from the use of alcohol because he cannot "afford to continue getting into trouble."

Applicant completed and executed a Security Clearance Application (SCA) in September 2003. In response to Question 24, which asked about prior alcohol-related charges and convictions, applicant failed to disclose his February 2002 DUI conviction. In Exhibit 5, applicant stated he did not list this DUI on the SCA "because [he] just overlooked it." In his response to the SOR, applicant stated he did not list this DUI because he was unaware he "needed to provide all the offenses." His statements were not credible, and I find that his omission of this DUI was intentional.

Between May 1997 and March 2003, applicant was cited and/or arrested on approximately 16 different occasions for driving-related offenses.

CONCLUSIONS

With respect to Guideline G, the evidence establishes that in 2002 and again in early 2003, applicant was charged with and convicted of DUI. This conduct reflects adversely on his judgment and reliability. It also requires application of Disqualifying Condition E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*).

Applicant's last alcohol-related incident occurred over two years ago. He has made the credible statements that he has not consumed alcohol since his last DUI in February 2003, and does not intend to consume it in the future. These facts qualify him for Mitigating Conditions E2.A7.1.3.2 (*the problem occurred a number of years ago and there is no indication of a recent problem*) and E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*). Based on the foregoing, and the lack of any real evidence that applicant was ever alcohol-dependant, Guideline G is found for him.

With respect to Guideline E, the evidence establishes that applicant intentionally provided false information to the Government when he completed the SCA in 2003. This conduct 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 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 . . .*).

The evidence further establishes that during an approximately six year period ending in March 2003, applicant was cited and/or arrested on approximately 16 different occasions for driving-related offenses. This conduct reflects adversely on applicant's judgment, reliability and trustworthiness, and strongly suggests he may be unwilling or unable to follow the rules and regulations relating to the safeguarding of classified information. Disqualifying Condition E2.A5.1.2.5 (*a pattern of dishonesty or rule violations . . .*) is applicable. No Mitigating Conditions apply. Based on the foregoing, Guideline E is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR 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