

KEYWORD: Personal Conduct; Drugs; Financial

DIGEST: Applicant's intentional falsification of material facts on a Security Clearance Application (SCA) precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

CASENO: 04-06409.h1

DATE: 04/21/2005

DATE: April 21, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-06409

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant's intentional falsification of material facts on a Security Clearance Application (SCA) precludes 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 November 29, 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 December 10, 2004, 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 February 1, 2005. Applicant filed a response to the FORM on March 12, 2005. The case was assigned to me on April 13, 2005.

## **FINDINGS OF FACT**

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

Applicant used marijuana twice. He first used it in October 1997 and last used it in October 2001. He does not intend to use it again.

Applicant intentionally provided false, material information to the Government in response to two questions on a SCA he executed on March 20, 2003 (Exhibit 4). Specifically, in response to Question 27, he denied that he had used marijuana "since the age of 16 or in the last 7 years, whichever is shorter." And, in response to Question 6, which asked about applicant's employment history, he failed to list his part-time employment with an individual in 2002 and 2003.

In a signed, sworn statement that he gave to the Defense Security Service (DSS) in June 2003, applicant stated he did not list his marijuana use on the SCA because he "thought that it was insignificant." In a signed, sworn statement he gave to DSS in February 2004, he stated he did not list his marijuana use on the SCA because he "did not get a high either time," and he didn't think it was significant. In his response to the SOR, applicant stated he denied any marijuana use because he "had forgotten about the one-time use of marijuana." He further stated that his "use of marijuana was an isolated incident and has not happened since October 2001." These and other statements applicant made in his response to the SOR indicate applicant had forgotten that he had previously admitted he had used marijuana on not one but two occasions.

Applicant was paid approximately \$5,500.00 by the aforementioned part-time employer and did not report the income on his tax return. In his February 2004 statement to DSS, he stated the following:

I was only helping them around the house for extra cash and did not consider claiming it on my taxes as it was only part-time, as needed, no contract labor. If necessary, I can make arrangements to pay the back taxes. I had absolutely no intention of evading taxes as I do work and did work during this time at a tax paying job. In addition, when I was initially interviewed, I was concerned about stating this extra income as I was afraid that I may have to pay back taxes. After reconsidering the issue, I am willing to make arrangements to pay the taxes in payments or whatever is necessary.

In his response to the SOR, applicant stated that he intended to report this income when he files his 2004 income tax return.

A March 2005 letter from applicant's supervisor establishes that applicant is considered to be an honest and trustworthy employee who performs well at his job.

## **CONCLUSIONS**

With respect to Guideline H, the evidence establishes that applicant used marijuana on two occasions, the last time in October 2001, over three years ago. 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*).

In his response to the SOR, applicant made the credible statement that he will not use marijuana in the future. Given this statement, and the passage of time since he last used marijuana, he qualifies for Mitigating Conditions E2.A8.1.3.1 (*the drug involvement was not recent*) and E2.A8.1.3.3 (*a demonstrated intent not to abuse drugs in the future*). Based on the foregoing, Guideline H is found for applicant.

With respect to Guideline E, applicant's failure to disclose his marijuana use on the SCA is troubling.<sup>(1)</sup> 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 . . .*). He does not qualify for any Mitigating Condition. Mitigating Condition E2.A5.1.3.2. does not apply because the falsification was recent, applicant did not provide the correct information voluntarily,<sup>(2)</sup> and this falsification was not an isolated incident.<sup>(3)</sup> Based on the foregoing, Guideline E is found against applicant.

The fact that applicant did not pay income tax on the wages he earned from his part-time work may be criminal, but it does not, standing alone, indicate applicant is having financial difficulties. Accordingly, Guideline F is found for applicant.

## **FORMAL FINDINGS**

PARAGRAPH 1: FOR THE APPLICANT

PARAGRAPH 2: AGAINST THE APPLICANT

Subparagraph 2a: Against the applicant

Subparagraph 2b: For the applicant

PARAGRAPH 3: FOR 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.

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Joseph Testan

Administrative Judge

1. Applicant's failure to list his part-time employment was not a material omission.
2. In his response to the FORM, applicant stated he disclosed his marijuana use to the [DSS] investigator only after the investigator "had probed for a response regarding any use of illicit drugs."
3. Applicant's repeated references to his "one-time" use of marijuana in his SOR Response must be deemed a falsification.